GUNNING FOR HATFIELD **RALPH FRIEDMAN**

THE
NATION

JUNE 21, 1971 *50 cents*

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The Burger Court And the Penal System
Sol Rubin

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Ralph Nader

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LETTERS

life in Seattle

Seattle, Wash.

DEAR SIRS: On Friday, May 7, at about 3 P.M., I happened to be on the sidewalk at the corner of 5th and Union in Seattle. I was watching the last of the crowd of fast-marching peaceful protesters.

A large number of blue-clad, helmeted men with riot sticks came down 5th Avenue, running toward them, pushing and kicking the hindmost of the fast-moving marchers whose apparent crime was to shout, "Peace, peace, peace."

I witnessed a slender, short young man being kicked and pushed, and then grabbed. The poor fellow could not run faster because of the crowd ahead. He was forcefully thrown down and the riot-clad officer jumped on his back, bearing down on his neck with his riot stick. . . . When I remonstrated against this inhuman treatment, I was threatened with arrest. . . . Mr. Edmund K. Kamai, Jr. of the Mayor's office was also a witness to these events. . . .

Earlier the previous week, I had been struck by a car while crossing the same intersection, 5th and Union. At that time, two policemen and someone identified as being from the Mayor's office very courteously and solicitously assisted me, bandaging my leg and taking me to the Medical Dental Building in their car. I was very grateful for their help. On Friday, May 7, I had gone to that intersection to review the exact circumstances of my accident, and that is how I happened to witness the events described above.

Souren H. Tashian, M.D.

more tools

New York City

DEAR SIRS: There are two technical errors in Lawrence Fernsworth's "New Tool Kit for a Police State" [*The Nation*, June 7], which is otherwise a praiseworthy summary of repressive legislation pending in the Congress.

The number of card indexes in the files of the House Internal Security Committee is 754,000, not the paltry 174,000 mentioned. On the same page, Eastland's Security Offenses Act of 1971, is properly numbered S.1499, not S.1449.

Fernsworth's necessarily constricted summary fails to state that the Industrial Security and Defense Facilities Act would proscribe employment or federal support to individuals who have committed acts of subversion defined as follows: "any act . . . which effects any plan, policy, recommendation, directive, tactic, or strategy of any communist, Marxist, Leninist, revolutionary socialist, anarchist, nihilist, Nazi, fascist, or any other organization which has as its purpose the destruction of the constitutional form of government of the U.S. by any means deemed necessary to that end." Representative Stokes, House leader of the opposition to the bill in the last session, pointed out that "The range of activity which, under this definition, would constitute an act of subversion, is boundless. . . ."

Another item of interest overlooked by Fernsworth was the confusion in the House respecting the effort to repeal Title II of the Internal Security Act of 1950, namely, the concentration camp provision. An excellent repeal bill, H.R. 234, was introduced by Congressmen Matsunaga, Holifield, Mikva and Kastenmeier, all members of the Judiciary Committee, with the approval of Judiciary Chairman Emanuel Celler. It is sponsored by 157 Representatives and is unopposed by the Administration. . . . The outlook for repeal would be auspicious but for the introduction of a rival nominal repealer, H.R. 820, by Ichord and Ashbrook of the House Internal Security Committee. This measure would not only perpetuate Title II but would expand the application to include the mass of dissenters and the entire

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EDITORIALS

The Politics of Problems

In a recent speech in San Diego, Sen. Ernest F. Hollings (D., S.C.) declared emphatically that America in 1971 finds itself "over-politicked, overpromised and underperformed." Faith in government has been deteriorating for ten years, as successive administrations have dealt with the politics of problems rather than with the problems themselves. The longer the practice continues the more government itself is placed on trial.

Consider one problem which is very much in the public mind at the moment: the killing of police officers. President Nixon's idea of tackling it is to invite a group of police officers to Washington for, as *Newsweek* puts it, "coffee and sympathy." Realizing, however, that this offers little consolation to the slain officers' wives and children, he emerged from the conference to propose a federal death bonus of $50,000 for the families of police officers killed in the line of duty. That is a good round figure for a headline, but it does nothing whatever to solve the problem. A policeman will fight just as hard for his life even if, as is most unlikely, his thought is on the $50,000 that will accrue to his widow if he loses; his assailant will surely not show mercy to save the federal government money. J. Edgar Hoover and Atty. Gen. John Mitchell were present at the conference from which this piece of irrelevance emerged, but Patrick V. Murphy, New York's Commissioner of Police and probably the finest administrative police officer in the country, was not invited. Murphy and Hoover are on less than cordial terms, but that was probably not the primary reason for his absence. The fact is that Murphy does not confuse problems with politics. "I believe," he said later, "that when we talk about permissiveness as the chief cause of crime, we do a disservice to ourselves and we do a disservice to the nation." We must, he said, attack the "root causes of crime." This, of course, is what Nixon, Mitchell and Hoover, for all their talk about "law and order," have no intention of doing.

There was not a word said at this conference about gun control. In 1968, the U.S. production of cheap handguns did not exceed 60,000; but, according to *The Wall Street Journal* of June 8, in 1969 gun makers obtained permits to import enough parts to assemble 568,500 handguns, most of them selling for less than $30. And in 1970 permits were granted to cover 872,400 sets of parts. Basing its forecast on permits issued in the first three months of 1971, the Internal Revenue Service projects 1.5 million sets for the year. These skyrocketing imports of gun parts have made a mockery of the so-called Gun Control Act of 1968. That is the problem to which the attention of the conference should have been directed. At a White House press conference on June 3, a reporter asked Mr. Mitchell how the Administration felt about federal gun control legislation. Mitchell replied that he was "surprised" that the reporter asked, and referred him to the Treasury Department. Not at all intimidated, the reporter said, "Well sir, I am asking you." The two exchanged remarks, such as: Reporter: "You have not answered my question, sir." The Attorney General: "I

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have told you exactly what my position is." Reporter: "I don't know what your position is, still." Nor does anyone else.

In the meantime, Representative Celler (D., N.Y.) has introduced a proposed Gun Control Registration and Licensing Act which, if enacted, would provide stringent, uniform, licensing standards—the indispensable first step to make possible a campaign against the favored weapon of the lawless, the handgun. As Mr. Celler told his colleagues, enactment of some such measure is required without delay if police officers are to be given a measure of real protection in the discharge of their duties.

Nixon Confuses Chou

In his day, Richard M. Nixon has confused a great many people. There is also a multitude he has never confused—they were on to him from the time he manhandled Jerry Voorhis and Helen Gahagan Douglas at the start of his climb to eminence. But now Nixon has achieved something of a record—he has confused Premier Chou En-lai, probably the most durable and perspicacious diplomat of our time. At least that is what Chou says, and there may of course be an element of Chinese wit in the confession.

That something is going on behind the scenes among the various actors in the Indochina-Soviet-Romania-China drama seems beyond doubt. One must go back a bit to make a guess at what may be happening. We do know that, while still engaged in private law practice (though with his eye on the Presidency), Mr. Nixon, representing Pepsi-Cola, got to know Nicolae Ceausescu, the Romanian Communist boss. Their meeting in Bucharest was something of a sensation, and it was followed by Mr. Nixon's 1969 visit, after he became President. Mr. Ceausescu returned the visit in 1970, and it was at a banquet given for his Romanian friend in Washington that Mr. Nixon first referred to the "People's Republic of China," a term he used subsequently in a domestic speech.

All that can be gleaned from this is that the President of the United States and the President of Romania have reasons for maintaining a more cordial relationship than the ideologies of their respective countries would seem to warrant. The motives may be assumed to differ on the two sides; still, there is some sort of entente, however precarious. And now Ceausescu has been on a visit to China. At a state banquet there he stressed the need for unity in the Socialist camp: his hosts did not applaud. But otherwise he received as cordial a welcome as the Chinese can put on, and that leaves little to be desired.

Romania is a maverick member of the Warsaw Pact. It has fostered close relations with China in the face of Soviet displeasure. "The Romanian people have backbone," Chou said. Well, what peoples don't have backbone? The superfluity of that quality accounts for many of the world's troubles. But what other countries have, through their respective Presidents, a link which may be construed to stretch across the East-West gap?

Thus the suspicion arises that Ceausescu is acting as a go-between in matters concerning China, the Soviet Union and the United States, and particularly in the matter that now so bitterly agitates them—Indochina. If the Indo-

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chinese war is ever to end, and it would be to Nixon's advantage to end it before the 1972 elections, China must have a prominent role in ending it. A settlement not approved by China would be no settlement at all. If the settlement is one that the Chinese can approve, they could put their minds to other matters more important to them, such as their relations with the Soviet Union and with Japan (which is well on the way to the economic penetration of Asia that preceded and led to World War II).

Nobody is risking much in such maneuvers as may be going on behind the arras. If something comes of these talks, everyone is in line for credit. If nothing develops, it can all be quickly forgotten.

Pursuing this line of thought: is Chou really puzzled? Or is he trying to make Nixon clarify a negotiating position that Ceausescu has outlined only tentatively?

Dissenting Opinion

Now that New York municipal workers have beat a "precipitate" retreat from their "outrageous strike"—phrases quoted from *New York Times* editorials—a dissenting opinion is in order. The purpose of the job actions —no strike was called—was simply to make upstate legislators, Governor Rockefeller, and suburban commuters aware that these unions existed and had been dealt with most unfairly. Once the point was made, the job actions were halted.

If these actions were "outrageous," then what is to be said of the situation which provoked them? Kicking New York City's budget back and forth between City Hall and Albany is an old, old game on which time has about run out. So, too, is an arrangement which gives upstate and suburban communities preferential treatment on rent control, taxes, and a dozen other issues. It is ridiculous to contend that the job actions were taken without notice. Explicit warning had been given; it had simply been ignored. Through established collective bargaining procedures, the unions had negotiated with the city a pension plan which the legislature, at the last moment, arbitrarily shelved. Under the circumstances, the *least* the unions could do was what in fact they did: demonstrate that if provoked beyond a point, they had power to bring the normal workings of the city to a halt.

Of course the city is nearly bankrupt, but somehow the public must be forced to take its plight seriously. Of course there are differences in the bargaining process as it affects public workers, but a strike whose effect is suffered by the public is not as obvious an outrage as it is invariably said to be. The taxpayer is the ultimate employer of the public worker; if he is an "absentee" employer, then perhaps the strike is the only way to bring him into the situation. Public workers will insist on equality of status with those in the private sector, and if their demands are not listened to seriously, they will use the same weapons unions have used in the private sector. The public deceives itself, and the press deceives the public, by keeping alive the notion that public service workers should not strike. Collective bargaining is meaningless without the right to strike. The best way to keep public workers from striking is to see to it that their aspirations are fully heard and their grievances fairly resolved.

The Permanent Emergency

Asked what is the most nearly perfect democracy in the world, the average complacent American would doubtless nominate the United States. He would be quite wrong. The truth is, as Clinton Rossiter once said, that we live under a "constitutional dictatorship," and we are unaware of the fact only because the emergency powers delegated to the executive branch for the most part lie dormant—but with no assurance that in some emergency, real or contrived, a future President (possibly even the present one) may spring a disagreeable surprise.

In 1933, President Roosevelt proclaimed a national emergency to deal with the crisis in the domestic banking system. In 1950, President Truman proclaimed another national emergency after General MacArthur had sent his troops up to the Yalu and been thrown back by the Chinese. Both these emergencies, and the executive powers established under them, are still in effect, although the banks were reopened nearly forty years ago and the Korean War has long been limited largely to occasional patrol clashes of no military significance, and to the perennial wrangles at the conference tables of Panmunjom.

President Truman had declared his emergency because of an alleged need to control wages and prices, increase war production, and speedily double the armed forces. It was not clear how any of these measures could benefit the forces which General MacArthur had so imprudently committed, nor how any of the nearly 200 laws which take effect when a state of emergency is proclaimed could have had that result. Among these were the President's right to take over radio and TV stations, a prerogative he did not choose to exercise.

But, since the Roosevelt and Truman emergency proclamations are still in effect, President Nixon could impose wage and price controls if he so chooses, and if Congressional opposition ties up the extension of the draft after June 30, Mr. Nixon could use his power to extend enlistments, deny retirements, and call up retired and reserve forces without the consent of Congress.

Sen. Charles McC. Mathias (R., Md.) has introduced a resolution to create a Congressional committee to report within 120 days on the feasibility of terminating the Truman proclamation, and perhaps impose a time limit on future proclamations, unless extended by joint resolution of Congress. Certainly thorough investigation is in order. There is no reason for allowing administrative booby traps of this kind to exist in perpetuity.

Act of Mercy

There is a chance that Congress may be induced to take action which could ultimately eliminate the death penalty. Some 650 executions are now pending and all sorts of stratagems have been proposed to prevent them. Governors and state legislatures either favor the penalty or are afraid of their constituents. The courts are hesitant about making decisions in an area in which they feel state legislatures should act, and this includes the Supreme Court (see article by Sol Rubin, this issue, p. 785).

Now Senator Hart (D., Mich.) has introduced a bill to suspend for a period of two years the execution of prison-

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ers under sentence of death. The act would provide breathing space in which Congress could then determine whether the death sentence runs foul of Section 5 of the Fourteenth Amendment which provides for the equal enforcement of the law. The theory is that the death sentence, notably in rape cases, is racially discriminatory as it has been applied. This is obviously an expedient, a way of stalling for time, but it would be helpful. What Congress should do is pass an act outlawing the death sentence on the ground that it constitutes cruel and unusual punishment and thereby violates the Eighth Amendment.

What is capital punishment, asked Camus, but the most premeditated of murders? It is the "ultimate penalty," incomparably the harshest known to our law, and invoked in a manner imposing the most terrible mental suffering, which can lead to insanity or suicide. An argument is made that since the death penalty was common enough when the Eighth Amendment was adopted it is therefore not unconstitutional. But the countering argument is that the conscience of a nation evolves, that standards of decency change, and that what was once regarded as not being cruel or unusual may be so regarded today. On issues of this sort, Congress has too often passed the buck to the courts; now Congress should exhibit some reciprocity, as well as courage and decency, and relieve the courts from further embarrassment.

Senator Hart's proposal is endorsed by some distinguished law school professors: Anthony G. Amsterdam (Stanford), Alexander M. Bickel (Yale), Archibald Cox (Harvard), Norman Dorsen (New York University), Paul A. Freund (Harvard), Sanford H. Kadish (California), Yale Kamisar (Minnesota), Philip B. Kurland (Chicago), Robert B. McKay (New York University), Paul J. Mishkin (Pennsylvania), Charles Nesson (Harvard), Louis H. Pollak (Yale), Terrance Sandalow (Michigan), William Van Alstyne (Duke), Herbert Wechsler (Columbia), and others. The proposal is, literally, an act of mercy.

The Hazards of Journalism

The charge of conspiracy, popular here recently with federal and local prosecutors, has now spread to Belfast, where four young men, termed by the police "an international anarchist bomb gang" posing as journalists, are being held for possession of a sawed-off shotgun, with ammunition, and for throwing gasoline bombs at Queen's University on March 30. Three of these men, Joseph Stevens (American), Felix de Mendelssohn (British) and James McCann (Irish), have been in jail since the night of the occurrence; Peter McCarten (Irish) has been released on bail and is expected to turn state's evidence. McCann, de Mendelssohn and McCarten were picked up on the street immediately after the bombing; the police allege they found the shotgun on McCann. Stevens was arrested in bed shortly thereafter, in a nearby flat where he was staying with friends. The police have produced witnesses who state that they saw four men running from the scene of the bombing, but none (so far as is known) who can offer to identify the accused. The men all say they were observing a riotous occasion in their capacities as journalists (Abbie Hoffman had made a speech that day and the streets were seething).

Sens. Edward Kennedy and Jacob Javits and Rep. Bella Abzug have made inquiries of the North Irish authorities, and Mrs. Abzug has been trying to get Stevens released from jail. He has worked at various times for Liberation News Service, the *East Village Other, Rolling Stone* and other underground publications, and has taken pictures for Decca Records and for the campaign last fall of Mrs. Abzug.

The crimes alleged carry very serious sentences: a minimum of five to six years if convictions are handed down on both charges. Persons concerned in this country, particularly because of Stevens' implication, have no way of knowing that the trial will be anything but scrupulous. But neither can they shut their eyes to the fact that North Irish authorities would be glad enough to show that the tragic and unremitting violence that has beset Belfast for many months was caused at least in part by foreign conspirators of extreme leftist views. Nor can they overlook the fact that, in choosing a jury in the emotionally charged atmosphere of Northern Ireland today, the defense is allowed twelve challenges and the prosecution an unlimited number.

Stevens and those associated with him will have the best chance to obtain justice if the American, Irish and British press report the court proceedings in detail.

Sugar–The Lobbyists' Dream

Few Americans are aware of the Sugar Act, enacted in 1934 and duly extended at three-year intervals. They eat and drink enormous quantities of sugar and the Sugar Act picks their pockets; but since it does so bit by bit they remain unconcerned. In *The Washington Post* Spencer Rich remarks acidly that the roster of lobbyists testifying before the House Agriculture Committee, which is expected to vote out a further three-year extension of the basic Sugar Act, "reads like an old boys' club of ex-federal officials." He ticks off Harold D. Cooley, a former chairman of the Agriculture Committee, who represents Thailand at $15,000 a year and Liberia at $10,000; Thomas H. Kuchel, former GOP Whip ($200 an hour from Colombia), Thomas Hale Boggs, son of the House Majority Leader (Central America at $36,000 to $50,000) and numerous others. Why all this effort at persuasion? Is it really to protect the domestic sugar grower (if so, why so many lobbyists for foreign growers?), or is the Sugar Act a cover for a gigantic swindle which costs American consumers at least $500 million a year over and above what they should be paying?

The United States produces sugar, both from cane and sugar beets, but not nearly enough to satisfy the demand. Of course, before Cuban sugar was defiled by Castro's communism, Cuba was the principal offshore supplier, and would be again if Castro would show reason and revert to the blessings that capitalism and Batista bestowed on the island in the good old days. In the meantime (and that may be quite a time), the Cuban quota has been reassigned to other foreign suppliers, no matter where located and in some cases for political reasons, or just plain graft.

This results in some impressive figures. The world price for raw sugar is now about 4¢ a pound; the United

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States pays 8¢, which may be reduced by 1¢ by shipping costs, tariff fees, etc. That still leaves a premium of 3¢ a pound. In 1970, foreign producers supplied about 5.2 million tons of raw sugar to the U.S. market out of a total of 11.6 million tons. With a quota system operating at 3¢ a pound ($60 a ton), the foreign producers pocketed some $300 million more than if they had sold at the world price.

Naturally, all the foreign producers want more of this lucrative business, and those who have no quota are begging to get in on the racket. Some of the pleas would bring tears to the eyes of hardened legislators. Thus Panama's lobbyist, who with his son represents four countries, pleads for a doubling of Panama's quota to 75,000 tons, on the ground that Panama offers "an excellent climate for U.S. investments . . . has never expropriated any property," and is in dire need of foreign exchange.

Canadians pay about 20 per cent less for sugar than do Americans, some of whom are none too affluent. Observing this and other aspects of a strange situation, Rep. Paul Findley (R., Ill.) tried in committee to get through an amendment setting up a commission to study this gouging of the American consumer. His proposal got seven votes out of the thirty-five-member Agriculture Committee.

Then Findley had another idea. Why not, he asked, let the foreigners *bid* for the allotment remaining after our own producers had been protected? Any surplus funds would go into the U.S. Treasury. He was again voted down.

Of course this racket might not have such easy sledding if one eminently sensible thing were done—if, to mutual advantage, the United States would resume commercial relations with Cuba. Here is a subject suitable for Ralph Nader's exertions. A better argument for consumer organization can hardly be imagined.

BILLION-DOLLAR TAX SUBSIDY

MR. NIXON'S TRICKY BONANZA

RALPH NADER

Mr. Nader, author of Unsafe at Any Speed *(Grossman), has made a national reputation as a champion of consumer interests. He is the founder and director of the Public Interest Research Group, with offices in Washington, D.C.*

Washington

"Make it complex and make it dull" is the sure formula for putting unjust government policies into effect with little public or Congressional notice. A perfect example of the technique was provided by the Asset Depreciation Range (ADR), announced on January 11 at the San Clemente White House. It sailed out and through the press corps with the efficiency of a mimeograph machine, giving the reporters, and therefore, of course, their readers, little reason to suspect the enormous unilateral power of the executive branch which the move embodied, or the great revenue bonanza—more than $3 billion a year—it augured for large corporations. Although this tax gift transgresses the constitutional separation of powers, there is every indication that the Treasury Department is about to issue regulations to enact the ADR system.

Three billion dollars is a considerable amount of money, even in this era of astronomical expenditures. It is more than the entire amount budgeted next year for the Environmental Protection Agency. The President's welfare reform proposals were to have cost only $2.1 billion. Total U.S. aid to preschool, elementary and secondary education for next year is priced at only $3.6 billion.

The foundations for this expensive tax subsidy were laid by a Presidential task force, led by John Alexander of President Nixon's former Wall Street law firm. Last September, that task force recommended basic changes in the tax laws concerning depreciation write-offs. Businesses were to be allowed to recover their capital costs in a short time rather than according to the actual useful life of the machinery written off. The task force noted explicitly that Congressional action would be required for a change to capital cost recovery system from the depreciation deductions currently allowed by Section 167 of the Internal Revenue Code.

The Administration doubted that such a proposal would fare well with the legislators. Only two years earlier President Nixon had asked for a repeal of the investment tax credit, a device that is generally considered a more effective economic stimulus than accelerated depreciation schedules, and the White House did not want to lose face, either by asking for a reinstatement of the investment credit, or by asking Congress for the less efficient ADR.

It was therefore decided that the task force recommendations would be implemented, so far as possible, by administrative fiat. On January 11, 1971, President Nixon announced that he had approved basic changes in depreciation policy. As Don Oberdorfer of *The Washington Post* recalls, "the news release and the briefing by Treasury officials was dry-as-dust, and most reporters found themselves scratching their heads and wondering what the story was all about."

The Administration was relying upon the complexities of tax law to protect itself from public debate as to the value and propriety of this multi-billion-dollar tax subsidy. Presenting ADR as an accomplished fact, the President made statements which have since been studied and found to be erroneous. Mr. Nixon declared that "A liberalization of depreciation allowances is essentially a change in the timing of a tax liability. The policy permits business firms to reduce tax payments now . . . and to make up these payments in later years."

Prof. Robert Eisner of Northwestern University, an

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economics expert on the determinants of capital investment, made this blunt rejoinder: "There is no knowledgeable expert in the Treasury or out of it who can stand by . . . the concluding clause of that sentence. . . . It is unfortunate that such a flat contradiction of what is an unambiguous matter of arithmetic and mathematics was made in the name of the President of the United States." The Treasury itself has acknowledged the arithmetic cost of the tax break by estimating an annual revenue loss of $3 billion and upward.

There is reason to believe that the Administration knew of the defects in the multi-billion-dollar tax subsidy before it made the announcement. In a confidential memorandum of December 11, 1970, a senior Treasury Department attorney—the Acting Assistant Secretary for Tax Policy, Mr. John Nolan—warned the White House that considerable revenue could be given to business, but that there were limits. He stated his serious fears that breaking the link between tax depreciation and the useful life of the machinery in question would involve an unlawful extension of executive authority. Exactly a month later, the President's ADR system did precisely that. The proposed system shortened guideline tax lives by 20 per cent. It also abolished the reserve ratio test—a correction factor based on the validity of earlier depreciation deductions—which was the link between those guidelines and the actual life of equipment in the hands of the taxpayer.

There is a disturbing word for an attempt to get a tax break that your attorney says is illegal. When Sen. Edmund Muskie released Mr. Nolan's secret memorandum to the press, he set off a display of bureaucratic fireworks. The Acting Assistant Secretary claimed that he had later telephoned the White House to say that he had changed his mind. Perhaps so, but President Nixon made no reference to this change of mind when the matter came up with the press. Rather, he told reporters that he had received memos from other people in support of his position. He acknowledged that legal opinion differed on the matter of authority, but concluded: "Now I, as President, and I may say, too, formerly one who practiced a good deal of tax law, I considered that I had the responsibility to decide what the law is. And my view is that while they had expressed a different view, that the correct legal view . . . was to order the depreciation allowances."

In the weeks following the President's exercise of legal judgment, more than a dozen tax authorities across the country expressed their view that the multi-billion-dollar tax break is illegal. These men include Boris Bittker, Sterling professor of law at Yale, Dean Bernard Wolfman of the Pennsylvania Law School, Oliver Oldman of Harvard Law School, and Mortimer Caplin, former Commissioner of Internal Revenue.

Shortly before President Nixon spoke on January 11, the Secretary of the Treasury was formally served with papers notifying him that a suit had been filed to enjoin the ADR system. Attorneys at the Public Interest Research Group had been following the activities of the President's task force with considerable interest. The task force recommendations entailed a fantastic loss of tax revenues with the promise of only limited benefits to the country as a whole. One of these attorneys, Tom Stanton, expected to submit comments before Congress if the recommendations were proposed as legislation. The White House decision to act by administrative fiat meant that there would be no airing of the pros and cons through such testimony before Congress.

Working on the basis of an early report in the Washington *Star*, Stanton and Sam Simon, also of the Research Group staff, filed suit on January 11 and thus generated the necessary public discussion. They contended that the Administrative Procedure Act required that an agency such as the Treasury publish advance notice of its intentions in the Federal Register. The agency was then required to allow public participation through the submission of data, views and arguments about the proposals. No

Noonan

mention of public participation was made by the President or by the Secretary of the Treasury at a subsequent press conference on January 11.

However, shortly after the suit was filed, Treasury officials called in the press to explain that the President's announcement of "approved changes" did not mean that there would be no public hearings. The Treasury had simply forgotten to mention them. Attorneys Stanton and Simon withdrew their motion for preliminary injunction when the government attorney presented affidavits from the Commissioner of Internal Revenue and the Assistant Secretary for Tax Policy assuring that hearings would be held.

On the very day that the motion was withdrawn, Asst. Secy. Edwin Cohen announced through the press that the possibility of any basic changes in the proposed regulations was "remote." He added: "We don't anticipate changing our mind. As a very practical matter, a businessman can rely on this going into effect, in its broad outline."

In short, the Assistant Secretary—who had served large

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business clients for thirty years as a Wall Street attorney —was assuring his constitutents that the public would remain powerless to prevent the $3 billion tax subsidy, regardless of the merits of the case, or what was brought out at the forthcoming hearings. Like its budget, the Treasury's prejudgments come big.

The public hearings were finally held on May 3, 4 and 5. The hearing room was packed with spectators, primarily attorneys from businesses favoring enactment of the regulations. The hearing panel sat at a long and imposing table in front of the hall. Edwin Cohen, the senior official present, was flanked by his two deputies, by Commissioner Randolph Thrower of the Internal Revenue Service, and by nine other Treasury and IRS officials. Among supporters of the Treasury position were speakers representing the U.S. Chamber of Commerce, the Association of American Railroads, AT&T, and the textile industry. On the other side were such speakers as Dean Bernard Wolfman on behalf of Common Cause, Nathaniel Goldfinger of the AFL-CIO, George Wiley of the National Welfare Rights Organization, John Kramer of the Council on Hunger and Malnutrition, and economists Robert Eisner of Northwestern, Martin David of Wisconsin, and Richard Pollock of the University of Hawaii.

Mr. Cohen and his colleagues remained true to his word. The hearing was conducted in an atmosphere of strong partisanship. Witnesses in favor of the ADR system —almost always speaking on behalf of clients—were complimented on their expertise and the fine cases they had presented. Witnesses against the proposals were roughly cross-examined and tested for their verbal agility rather than for their expert knowledge.

Dean Wolfman had come on behalf of Common Cause to discuss his serious concern that the proposals were illegal. He was deliberately scheduled for late in the day, and finally spoke at six o'clock, after reporters had left to write their stories. As Sen. Birch Bayh put it, the hearing was a "charade."

During testimony at the hearings, I urged that Mr. Cohen's prejudgment had been so overt as to constitute a violation of the Treasury's own Minimum Standards of Conduct. Those provide that, "an employee shall avoid any action . . . which might result in, or create the appearance of: . . . (d) Losing complete independence or impartiality; . . . or (f) Affecting adversely the confidence of the public in the integrity of the Government."

As a lawyer, Mr. Cohen knew that members of the public do not yet have standing formally to invoke the Minimum Standards of Conduct against an official acting to the contrary. Thus, he has not removed himself from further participation in ADR decisions. But his response at the hearings, it seemed to me, did reflect his dawning realization that the simultaneous roles he was playing of proponent, advocate and judge might be too heady a mix for administrative fairness.

The ADR controversy continues. It is almost certain that the Treasury will issue ADR regulations in final form. After that, a group of concerned plaintiffs will probably have to take the Treasury to court. Most likely, some modifications will then be made by the Treasury to avoid the most blatant evidence of illegality. On the other hand, the revenue loss will surely be close to that promised by Mr. Cohen.

The Treasury responded to the White House in the December 11th memorandum that "you inquired whether these are the maximum we could do." The Treasury has steadfastly done the maximum for the White House; it remains to be seen whether it can be moved to serve the citizen taxpayer with similar zeal. For the first time those citizens had a presence at a Treasury hearing. Numerous lawyers and groups who became involved in the ADR issue on the public's side are now determined to change the ways whereby Treasury makes such decisions. □

EUROPE: END OF AN ERA

TROOPS, TRADE AND DIPLOMACY

ROBERT E. HUNTER
Mr. Hunter, a free-lance writer based in Washington, is the author of Security in Europe *and* The Soviet Dilemma in the Middle East.

Washington

May 1971 could go down in the history of diplomacy as one of those critical months when a series of events sets in train developments that are to affect nations for years to come. A "breakthrough" at the SALT talks, a political agreement on Britain's admission to the European community; a Soviet offer to talk about troop reductions in Europe, and a Senate vote on the withdrawal of half the U.S. troops in Europe—all these events could foretell the end of a quarter-century of political practice. The post-war era may now be over; a new era may indeed have begun.

As often happens with such great developments, the drama began in a mundane way when, once again, Senator Mansfield introduced a proposal to reduce U.S. forces stationed on the Continent. But it ended in a political triumph for President Nixon on several fronts; in a potential reshaping of Western Europe politics; and in signs of possible major progress in East-West relations. Most important of all, the developments of May are closely related, and potentially reinforce one another.

It is tempting to dwell on President Nixon's announcement about developments at the SALT talks in Vienna, but the changes now possible in Europe are equally important. Under way is a major redefinition of Atlantic politics, and the relating of these politics to East-West

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understanding. None of this should be surprising; the trend of events had been clear for some time, if only a number of dilemmas could be resolved.

The first dilemma resided in a conflict between U.S. and European views of *détente* with the Russians and their Warsaw Pact allies. Our allies have long held vague suspicions that we might conclude some agreement on strategic arms with the Soviet Union without at the same time trying to obtain something of interest to West Europeans. In simplest terms, this "something of interest" means a shift away from the infamous Brezhnev doctrine, under which the Russians have attempted to justify in advance a decisive role in East European countries—leading, if necessary, to attacks like that on Czechoslovakia in 1968. At the very least, the Russians have insisted, West European efforts to improve relations with East European countries must be closely controlled by Moscow, if not actually directed through the Soviet capital. For our allies, therefore, critical questions had to be answered. Would the United States reach agreement with the Russians at SALT without trying to change Soviet behavior in East Europe? Or would we insist that any progress must benefit our allies as much as ourselves?

Until recently, Washington had refused to face the implications of these questions. For one thing, the Administration permitted rumors to circulate that it did not trust the efforts being made by the West German Government to improve relations with the East. By giving voice to those misgivings, the U.S. Government only increased the tensions already existing between our direct dealings with the Soviet Union and our allies' view of them.

For another thing, Washington continued to oppose the convening of a European Security Conference, as proposed by the Warsaw Pact powers and favored by a few of the minor NATO nations. The State Department saw it as premature; as a potential vehicle for a Soviet "propaganda victory"; and as a threat to NATO's political cohesion, without promise of offsetting benefit. But here, too, we failed to understand the concern of our allies that some advance be made in a strictly European *détente* with the East, as the price of our reaching agreement at SALT. Perhaps a security conference would have been ill-advised, but we had nothing to put in its place.

The Mansfield amendment threatened to make matters worse. It called into question our willingness to keep on the Continent enough troops to indicate our support of West European objectives. It also raised doubts as to whether we are really at all concerned about the future of Europe. Coming hard upon the dollar crisis, the amendment reinforced the fears of those Europeans who already believe that the experience of Vietnam will lead us to cut down on our commitments in other parts of the world.

But while Europeans have been concerned with these broad questions of our political intentions, the U.S. Government has tended instead to concentrate on the strategic and military implications of troop reductions in Europe. The Administration has also seen possible reductions, not in terms of our allies' concerns but as a means to gain some corresponding reduction in Soviet troop strength there. In order to preserve another "bargaining chip," it therefore refused to broach the subject of U.S. troop reductions on its own, and thus paved the way for the psychological damage caused in Europe by the Mansfield amendment.

Yet neither the strategic nor the bargaining concern is all that important. In the first place, no European any longer believes that there will be a war on the Continent. Few even believe the Soviets would resort to political blackmail if the current balance of forces were not maintained. In the second place, it is likely that force reductions in the West would in any event be followed eventually by reductions in the East, because the Russians also feel the pressure of rising troop costs. Of course, the Soviet Union may still think it must retain forces in the Eastern bloc countries in order to impose some discipline over internal developments; in which case the Russians will make no reductions, whatever happens in the West. But for West Europe, the key issue is still not the relative number of U.S. troops that remain on the Continent. Rather, it is whether the United States will continue to demonstrate its commitment to Europe—a commitment that is psychological, not military. If Europeans continue to believe in it, the number of U.S. troops deployed to back it up becomes a far less important issue. If they do not believe in it, today's current force levels will not suffice.

Backes, Neues Dorf (Bavaria)
Willy Brandt

The same kind of reasoning can be applied to the interests of the Soviet Union in Western Europe. It may want to increase its influence, and reduce the NATO nations to the semi-dependent status of Finland. But gaining this objective will not depend primarily upon the state of the military balance on the Continent; it will be attained or not more according to the degree of common interest and sense of involvement that remains between West Europe and the United States.

As a result, the key U.S. interest will be to preserve and convey a sense of commitment to the Continent's

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future, however many troops we supply to NATO. This means that the *way* in which force reductions take place, not the absolute number that remains, will be the important factor. If the process is orderly, with the allies fully involved, there would be few political problems. But if the withdrawal is haphazard, the Soviet Union would be given all sorts of opportunities. At the same time, our European allies could well panic in the face of what seemed to be an American retreat from their area. They would probably proceed with the idea of a European defense force and, more particularly, the idea of a European nuclear deterrent. Inevitably, this would raise the question of West Germany's contribution to such a deterrent. Then, as Germany's neighbors revived old memories, we should have a first-class crisis on our hands. It would make no difference that this crisis would come about over a military capability that few Europeans think is necessary for defense or deterrence; the problems would arise nonetheless, if only because of the hold that traditional attitudes about military forces and security still have on people's minds.

That is the sequence of events that the Mansfield amendment promised to trigger. It may yet do so later in this session of Congress, if the Administration does not now take urgent steps to seek some U.S. force reductions in an orderly process of negotiations with our European allies. The Administration was warned many months ago that it could no longer expect to maintain 310,000 men on the Continent without challenge from Congress. Unfortunately, it chose to insist upon this "magic number" as the principal symbol of our commitment, instead of working for a much lower number that would serve just as well.

Happily for Mr. Nixon, the Russians came to his rescue. This was not the first time that Moscow had mistimed or misjudged its actions in ways that worked to its detriment. Usually, the West has benefited from Soviet threats at the very moment when some spur to alliance was required. This time, however, a Soviet proposal for direct negotiations to reduce forces in Europe gave the President the argument he needed to turn back the Mansfield amendment.

Of course, it is not certain that the Russians themselves would rejoice if the United States reduced its forces in a haphazard fashion, or even left the Continent entirely—as Moscow has long publicly advocated. Along with their Warsaw Pact allies, they, too, must be concerned about Germany, and particularly about the prospect that the *Bundeswehr* will become the only sizable military force in West Europe. West German participation in any kind of nuclear force would, to say the least, disconcert those countries that suffered German occupation during the last war.

These problems could be resolved in a series of negotiations about the reduction of forces on the Continent. Indeed, the actual substance of such talks would be less important than the fact that they had taken place. There are obvious difficulties in equating Soviet and American forces, especially since the former have only to withdraw a few hundred miles, while the latter must cross an ocean. But such considerations pale beside the political value of initiating this process of change—one in which, everyone agrees, the object is to retain a state of European security, but at less cost.

The United States was quick to indicate its acceptance of the Soviet proposal, even though it had ignored a similar suggestion made a few weeks earlier when there was no Mansfield amendment to defeat. The Administration took a further step, urging acceptance of the idea that talks about forces precede a satisfactory agreement on the status of Berlin. That is a significant development. Until recently, the allies had insisted that agreement among the four powers on Berlin precede virtually any further progress in a general European *détente*. This meant no European Security Conference; it also meant that the treaties which Bonn had negotiated with Moscow and Warsaw could not be ratified.

At the time, there was merit in this view, since the West German Government had to assure its own population that *détente* with Moscow was not being purchased at the price of West Berlin. In the process, however, the Soviet Union was being given a veto over *Ostpolitik*. That did not seem to matter, since Russia did not then seem to be prepared to move on any other major aspect either of *Ostpolitik* or of *détente* in general. But this position also gave a veto to East Germany, which has staunchly opposed *Ostpolitik* on the ground that it is a West German attempt to isolate the regime in Pankow. In fact, there is some evidence that the interruption of traffic between West Germany and West Berlin earlier this year was the doing of the East Germans, not of the Russians.

Unfortunately, by putting a Berlin agreement ahead of most other steps in European *détente,* and not just ahead of the moves by West Germany, the Western allies were making a tacit admission of failure. The Berlin issue, after all, is of such complexity and symbolic importance for all concerned, that it is likely to be settled finally at a fairly late date in *détente*, despite recent evidence of Soviet flexibility. To make Berlin the test case of Soviet intentions, therefore, was putting too much weight on the wrong issue, at the price of a more gradual, step-by-step approach to *détente*. When the Soviet Union proposed talks on troop reductions, however, the United States and its allies were faced with a dilemma: how could they continue to permit the single issue of Berlin to dominate Western actions? Even the West German Government, despite its initial insistence on the primacy of a Berlin agreement, later acquiesced in talks to reduce forces across the board in Europe.

At the ministerial meeting of the North Atlantic Council on June 3 and 4, the allies adopted a compromise formula: there should be a series of bilateral talks between East and West to clarify the Soviet proposal. This fall the council will then decide what to do in responding officially to Chairman Brezhnev.

This decision, proposed by the United States, is a gamble. It is based once again on a desire to see progress made on Berlin, in order to justify the needs of Herr Brandt's coalition government. It is true that the NATO ministers did not formally link the talks on force reductions to progress on Berlin, but they still assumed that the West German interest will be satisfied before the wider issue of troop levels is joined.

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The gamble could fail. Once again, it gives the Russians a veto on *détente*, by making the erroneous judgment that a Berlin settlement should be a prerequisite of *détente*, rather than a later product of it. This problem is complicated by the possibility that Senator Mansfield will reintroduce his amendment on U.S. force reductions. This time, the Senator is less likely to go along with the Administration if NATO appears to be dragging its feet on the Soviet proposal.

Thus the stage is still set for crisis in the alliance. If the Russians do not move far enough on Berlin during the next few months, there will likely appear a growing divergence between the West German interest in Berlin and the desires of the rest of the alliance to accept the Soviet offer on force negotiations. And there will be more pressures in the United States to bring some troops home, with the attendant worries in Europe about our commitment. By temporizing on the issue of troop reduction talks, therefore, the NATO ministers have bought some

Behrendt, Het Parool (Amsterdam)
Leonid Brezhnev

time to work on Berlin; but in the process they have given hostage to Soviet and East German good intentions.

The Russian proposal for talks on forces in Europe may be a vehicle for getting at still another difficult problem of *détente*. Again, this relates to the SALT talks, and the need the United States has to secure its allies' interests in *détente* at the same time. Until President Nixon and Chairman Brezhnev apparently intervened in the strategic arms negotiations, the talks were stalled, partly over the status of American aircraft and missiles stationed with NATO and with the Sixth Fleet in the Mediterranean. Were these strategic weapons to be included in any count of U.S. offensive missiles? The Russians thought so, but we faced a problem. If we admitted these weapons to the bilateral negotiations, we would be implicitly making fundamental decisions of NATO strategy without the participation of the West Europeans. As a result, we refused to discuss these so-called "forward based systems" at SALT. Of course, we could have initiated a process of negotiations with our allies on these systems, but, as with the question of our troop levels, the Administration decided not to risk losing control of the diplomatic process.

This problem would be a natural one to come up at a European conference on troop levels, along with a parallel West European concern: the few hundred remaining Soviet medium-range missiles that could reach the Western half of the Continent but not the United States. Indeed, Mr. Brezhnev included "armaments" in his proposal for European talks. So far, the Western allies have not decided what to do about this proposal insofar as it would relate to these nuclear weapons.

The issue must be faced some day. It may be that the Russians have set aside the question of forward based systems in order to get a first-step agreement at SALT, but without question they will return to it. When they do, the talks on European troop reductions that may then be under way could provide the ideal occasion for discussing these knotty political matters in a forum that would include all the Western allies, not just the United States.

These are some of the diplomatic changes and developments that have been taking place recently in Europe. They have profound implications for SALT, in that they reduce the problems for the United States of concluding on a bilateral basis an agreement that would have implications for West European interests in *détente*. Indeed, now that Mr. Brezhnev has re-emphasized his doctrine at the Czechoslovak Party Congress, fears will grow in West Europe that the Russians are making concessions to the United States on arms problems—and possibly on Berlin—in order to gain a free hand in East Europe. That gives an even stronger reason for us to support the interests of our allies, as well as our own and those of West Germany.

These diplomatic changes have also come at a propitious moment from the standpoint of Britain's projected entry into the European community. France has already extracted from Britain a general indication that the latter will move closer to Europe, and in effect abandon its postwar ambitions to have a "three-circles" foreign policy: Europe, the Atlantic and the Commonwealth. Still unresolved, however, is the possibility that some form of defense community will emerge on the Continent, with a pooled Anglo-French nuclear deterrent as its linchpin. Whether this materializes depends at least in part on what role the United States is prepared to play in the future of the Continent. It also depends on the need that various European countries feel to augment their economic and political relations with military force, the traditional coin of power.

Recent developments are important, in this context. In the first place, a possible reduction of both NATO and the Warsaw Pact forces (the so-called Mutual and Balanced Force Reductions) could increase chances that the United States will maintain on the Continent those forces needed to indicate our continuing interest in Europe's stability. It could also set in train a procedure for U.S. troop reductions less likely to be disruptive of Atlantic

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diplomacy than one in which a succession of Mansfield amendments is met by an adamant Administration, in a clash between Senate and President. In the second place, some progress on force reductions, plus a limited agreement at SALT, could reduce the emphasis which some West Europeans place on having their own defense community. They will be inhibited from taking new initiatives by the very fact that a process of force reductions is taking place.

But most important, this whole set of diplomatic developments in the realm of weapons and forces supports some changes that have been taking place in any event. Agreements in this area would bring the hope that the importance of military forces in estimating inherent power on the Continent will be reduced. And the nature of the Atlantic relationship itself is changing. It has become increasingly clear in the past year that relations between the United States and West Europe are becoming less concerned with military matters, of any kind, and more concerned with questions of economics and trade. Indeed, these actually are *security* questions, in the sense that America's commitment to Europe's future is the important thing, not the way in which it is expressed. If there were going to be a threat of war, or even of Soviet blackmail, that would be untrue. But with care, such threats should not materialize.

In fact, the most significant step taken by the United States to reassure our allies about our future intentions did not come with the defeat of the Mansfield amendment, nor with the President's reaffirmation of the magic number of U.S. troop levels in Europe. It came, rather, in the defeat of the Trade Bill of 1970, which might have set off an Atlantic trade war that could have substantially undermined the psychological value of a full garrison of U.S. forces on the Continent. Unfortunately, the Administration did not really appreciate the dimensions of this problem, nor its potential impact. Therefore, we have not yet given adequate attention to preventing a trade war in the future; to obtaining Atlantic understanding on the role of the dollar in Europe; to working for a harmony of business and trading practices; or to deciding how the multinational corporation will be controlled. We have not faced the possibilities of a Continent-wide economic Gaullism that could conflict in a serious way with Atlantic attempts to eliminate strains in matters of security, and particularly strains arising from different objectives of *détente*.

It is not difficult to see why we have yet to grapple with these impending developments in the Atlantic relationship. For one thing, we are still dependent upon a set of institutions that served us well for twenty years by providing a multilateral forum for discussing common problems. These institutions are primarily military, and center around NATO. In the future, however, we shall not be able to afford the luxury of concentrating on the role of NATO in alliance politics, when relations among the allies depend increasingly upon what is done in economics and trade. The Organization for Economic Cooperation and Development (OECD) is a far better forum, and better reflects the fact that "Atlantic" relations also depend in part on the role played by nations in other quarters of the world, notably Japan. The OECD is not much of an organization at present; it will need to be made much more important, especially if present ventures in *détente* diplomacy reduce even further both the real and psychological importance of military forces and strategy on the Continent.

Finally, we still do not have a clear grasp of the changing nature of international politics. It is true that military force will not entirely disappear as a means of ordering relations among states, but its significance in the part of the world stretching from the United States across Europe to Russia is diminishing. That is particularly true as the superpowers reach understandings about the limits of each other's activities in major parts of the world, and as Europe experiences a phenomenal economic resurgence. In effect, we are entering a period, not unlike that after 1815, when a concert of interests, albeit loosely constructed, will reduce the opportunities for military power. Economic power and economic relations will become increasingly important in determining the relative strength of nations and of groups of nations.

Behrendt, Het Parool (Amsterdam)
Georges Pompidou

In that period, the United States should fare well, but we can no longer expect to play the dominant role in our direct dealings with our European allies. It may be that the economic interests of the United States will not stand in fundamental conflict with a Europe soon to include Britain, but it is evident that the basis of our overall diplomatic relations across the Atlantic will be dominated by these economic and trade questions, and not by those that occupy us in the military diplomacy of the moment. These developments may also play an increasing, if not dominant, role in U.S.-Soviet relations. The real significance of May 1971 may prove to be that in that month Europe, America and the USSR took the first major steps toward liquidating practices that stood in the way of a new diplomacy for a world that is increasingly interdependent. If that is the fact, May 1971 will prove to have been a month well spent. □

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OREGON: GUNNING FOR HATFIELD

RALPH FRIEDMAN
Mr. Friedman is The Nation*'s correspondent in Oregon.*

Portland

Oregon conservatives are gathering ranks and laying plans for a huge war chest to topple Mark Hatfield in 1972. They are angry at the Senator for his opposition to the war, his sympathy for young dissidents (though he has assailed the more dramatic actions of the militants), his criticism of Nixon and Agnew, and for "spending too much time with foreign affairs rather than caring for Oregon," as a GOP big wheel told me.

Hatfield may not seek re-election in 1972. He has repeatedly said that he is keeping his options open. On occasion he has hinted that he would like to return to the field of education (he is a former dean of Willamette University), this time probably as a college president. There is also the possibility that he may assume the kind of national leadership role John W. Gardner has taken in Common Cause, or he may simply retire to his recently purchased home on the Oregon coast, where he will write and whence he can journey to campuses to deliver well-paid speeches. Few people in the nation are as much in demand before university audiences as is Hatfield.

A skillful politician who gained idealism and courage as he moved up the political ladder (he was state Representative, state Senator, Secretary of State and twice Governor before being elected to the Senate in 1966), Hatfield gives signs that he is wearying of political gut-fighting. Beholden to power groups in the past, he now longs for the independence that is blocked by contributions. He has estimated that the cost of being elected U.S. Senator is in the neighborhood of $1 million, that much being needed for the primary and general campaigns.

The conservatives have already picked their man, Gov. Tom McCall, who followed Hatfield into the Statehouse. Whether McCall will bow to conservative urging is still a matter of doubt, but the doubt grows thinner as pressure mounts. A poll by the Multnomah County (Portland) Young Republicans showed McCall substantially ahead of Hatfield in voter preference and Hatfield is sneeringly being advised that if he does not retire he will be crushed at the polls.

Though the Young Republicans' sampling was small, and no explanation given as to how the poll was taken, the results made the front pages of *The Oregonian* (Portland) and other leading dailies, as well as gaining attention in the news programs of the state's broadcasting studios. The sneering advice to Hatfield would have little meaning if McCall also came under attack, which he seldom does, in editorials and in the letters columns, and if McCall were not frequently mentioned as a "vast improvement" over Hatfield.

McCall, now serving his second term as Governor, is the strongest vote getter in Oregon and one of the most popular politicians the state has seen in this century. A former telecaster and Secretary of State, he knows the state intimately, a strength he shares with Hatfield. McCall has excellent rapport with the press, and constantly reminds reporters that he is, really, "a journalist on leave of absence." Last summer I met him at a motel swimming pool in the small plains town of Mardras, to which he had come to add luster to a local festival. Knowing of my writings, he spoke of his own journalistic experience, bending aside more important questions. "I've been a reporter longer than you have," he bragged, and expressed a nostalgia for the old days of covering the news. He said he was eager to return to journalism.

If McCall continues as Governor, he will not return to journalism until 1975, at the age of 62. If he runs against Hatfield and is successful he will probably try for a second term in the Senate. If he wins that he will be 71 when his second term is up, and that, these days, is too old to think about getting back to the business of reporting the news.

A tall, long-striding man who was brought up on a bunch-grass ranch in central Oregon by his colorful parents (his mother turned author some years ago, when she was in her mid-70s, and now has a second book in the works), McCall is a folksy, plain-talking man who prides himself on forthrightness. He put his political future in the national Republican Party on the line when he vigorously opposed the Pentagon's plans to ship nerve gas from Okinawa to Oregon, and he has publicly chastised Spiro Agnew for the latter's campaign tactics, which McCall felt were harming the party and dividing the nation. He is a strong conservationist, friendly to labor, and sympathetic to small farmers. He also credits himself with having played a signficant role in "averting bloodshed" at the 1970 American Legion Convention in Portland by turning over a state park for a rock festival, to draw off young people who might otherwise have demonstrated against the veterans.

McCall has several hangups and weaknesses, including an ear deaf to radical ideas, a distinct uneasiness in meeting with dissidents (he makes great efforts to avoid them or, failing that, he lectures them sternly), and a lack of understanding of broad domestic social issues and foreign affairs. But his major weakness in Oregon is on Indochina. He was a member of the delegation which "monitored" the South Vietnamese elections and found them "fair and honest," and in practically every respect he supports Nixon's Indochina policy.

If McCall decides to run against Hatfield, that primary contest may even overshadow the November Presidential election in Oregon. (It certainly will if Humphrey or Jackson is the Democratic nominee.)

In 1966, Hatfield won easily in the primary, but in the general election faced stiff competition from ultra-hawkish Robert Duncan. Thousands of pro-war Republicans voted for Duncan and thousands of anti-war Democrats voted for Hatfield, who had already aligned himself with the peace forces. In 1972 it can be expected that, barring the now doubtful possibility of Wayne Morse seeking to return to the Senate, thousands of anti-war

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Democrats will change registration to vote for Hatfield. They realize that the winner of the GOP primary will surely emerge victorious in November, there being no strong Democratic challenger at hand or on the horizon—unless it be Morse, and nobody wants to gamble on that.

If Morse does run, a great many Democrats will be in a dilemma: to pull Morse through the primary or to defeat McCall. My own feeling, based on extensive discussions, is that the peace ranks will split, with those working for Hatfield arguing that they may have two chances to beat McCall—in the primary and, if he gets through that, in the general election.

Had it not been for the peace people, Hatfield would not have been elected in 1966. Today, the peace forces in Oregon are at least five times what they were then. Realizing how they were responsible for the defeat of Wayne Morse in 1968, when they had let down after winning the primary for Eugene McCarthy, they will not allow their energy to wane in 1972.

McCall has powerful forces at his command. The hawkish Newhouse papers, *The Oregonian* and the *Oregon Journal*, especially *The Oregonian*, with the largest circulation and the nastiest editorial writers in the state, are expected to push for him. Money will be no problem, and he will have the backing of most of the Republican Party apparatus as well as some right-wing elements of the Democratic Party.

If the Hatfield-McCall campaign materializes, as now seems likely, Hatfield will need strong financial support from outside the state (and it will not come from the national GOP). With few exceptions, the fat cats will open their purses to McCall, and Hatfield simply cannot be expected to raise even $500,000 within the state. Unless he receives significant outside financial aid, McCall may wind up outspending him by two or three to one, and that, despite all that the peace forces can do, will assure McCall the Senatorial seat.

Hatfield has become one of the tribunes of the nation. He has not exactly filled the heroic shoes of Wayne Morse but he has done more to ease the pain of Morse's defeat than anyone could have imagined a few years ago. The fundamental issue between Hatfield and McCall is one of peace versus war, withdrawal or U.S.-involved Vietnamization. This is a national issue, to which the entire peace movement of the country ought to respond. □

LABOR'S NEW BLOOD

INSUBORDINATE RANK AND FILE

SANDOR M. POLSTER
Mr. Polster is on the staff of the New York Post.

In mid-April more than 5,000 of New York City's 11,300 firemen massed inside a midtown auditorium and overwhelmingly voted down a leadership-supported city contract offer. The contract would have granted the firemen a handsome wage increase, fringe benefits and a forty-year, full-pension program. Altogether, the package would have boosted their current $10,950 a year top salaries to about $15,500 in January 1973.

The firemen, by rejecting the tentative contract agreement, joined an estimated 12 per cent of the country's labor unions in what has become a phenomenon of increasing concern to organized labor, management and mediators. Never before in the nation's labor history have there been so many rank-and-file repudiations of leadership-negotiated contracts as in these past half-dozen years. To say that the cause of this problem is the economy is to overlook elements of far greater consequence.

The Federal Mediation and Conciliation Service has compiled the only accurate figures on contract rejections, and its statistics apply only to those negotiations "actively" entered by the agency. However, the figures are a good barometer of the problem: in 1964, there were 8.7 per cent rejections by the rank and file of the 8,000 cases mediated by the FMCS; in 1965 there were 10 per cent; 1966, 11.7 per cent; 1967, 14.2 per cent; 1968, 11.9 per cent; 1969, 12.3 per cent, and last year, 11.2 per cent. Mediators and others who follow the national labor picture maintain that if accurate records were kept of all contract rejections, the figure would be close to 15 per cent.

"Negative membership response to settlements negotiated by authorized union leaders has been apparent in negotiations across the country for at least the past ten years," says Walter L. Eisenberg, chairman of the Hunter College Economics Department and mediator in the contract negotiations between New York City and its municipal service unions. In the past five or six years, adds Eisenberg, "some very substantial collective bargaining settlements have produced negative results in large urban centers."

One of the first and most significant of rank-and-file repudiations occurred during the International Association of Machinists negotiations with the airlines in 1965. The membership rejected a settlement reached by its leaders at the White House, with the assistance of President Johnson. New York attorney and labor mediator Theodore W. Kheel refers to the airline mechanics' action as "an historic turning point. It broke guidelines. It was a dramatic repudiation by the rank and file of the settlement made by the leadership."

That strike in 1965 signaled the beginning of a period of restlessness and militancy in the labor movement that continues today. To understand the problem fully it is necessary to study the changes organized labor has undergone in the past dozen years.

Several labor experts, including Eisenberg, see the Taft-

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Hartley Act of 1947 as the beginning, and the Landrum-Griffin Act of 1959 as the end, of Congressional attempts to impose controls at the bargaining table and on the union's own affairs. The unions have claimed that the power which this legislation gave the membership has undermined the leadership control of the rank and file. "The impression was created," says Eisenberg, "that union leadership could be brought to book by the membership. It created mistrust of the union and the union leadership."

The change in temperament is also linked to a change in the composition of union membership. Eric J. Schmertz, Hofstra University law professor and labor mediator for New York City, says: "In the past, when there were immigrant workers, the membership was more inclined to accept the decisions of leadership. . . . Once all members and leaders were of a single class, they identified with that class, their political persuasions were the same. There was an identity between members and leaders. The membership of a union today is so diverse that the interests and the demands no longer coalesce. . . . The level of education has made a difference. You have a more educated membership now that questions the job its leaders are doing. The diversity of the membership, its improved economic status, its increased education make the member more of an individual."

This difference has arisen recently. In the 1930s, the depression gave workers a common cause; then, in the 1940s World War II, and in the 1950s the war in Korea imposed economic controls. But in the 1960s there was a war economy without defined controls; and compounding the runaway economy of the 1970s, with its hectic wage-price spiral, is an air of militancy.

Vincent McDonnell, chairman of the New York State Mediation Board, says of this growing militancy: "I think it's the general way of life that's been developing for a number of years. A good deal of it started in the civil rights movement, then expanded into the schools and now it's expanded into the labor unions. There's nothing phenomenal about the rank and file overturning the leadership in contract ratification. They see everybody doing these things, and they do it, too."

According to Eisenberg, "We're living in a time where groups that have not had a sense of group power are now exercising it, or groups that have exerted it with great restraint are now exerting it with force." The workers' new awareness of their power hasn't been due entirely to outside influences. An ever increasing number of young persons have been joining the work force, producing labor's own generation gap. Matthew A. Kelly, professor at Cornell University's School of Industrial and Labor Relations, writes in the July 1969 *Labor Law Journal*: "The composition of most union memberships has been going through a dramatic and dynamic change and it is the exception where there has not been a recent major influx of new and youthful members, whose needs, goals and attitudes toward established ways differ sharply from those of their elders. This is especially pronounced in industrial unions where it no longer is a rarity to find that fully one half of the union membership is under 30, or that close to half the membership joined the union within the past four years."

William E. Simkin, former chairman of the Federal Mediation and Conciliation Service, surveyed federal mediators across the country from July 1, 1965, to June 30, 1967. From these data on 1,520 labor disputes he concludes: "Many younger workers who have grown up in a period of relative affluence have never experienced either a real depression or the early history of union struggles. Moreover, they are not very interested in attempts to acquaint them with these hard facts of earlier years. Many have never experienced a strike of any duration. When these facts are coupled with what may be loosely described as the current disillusionment of youth in other areas of activity, negative ratification votes are not surprising."

Simkin's study is nearly four years old, but observers of the labor scene nevertheless cite the report today as an authoritative account of the causes of the rejection phenomenon. Coupled with the problems of labor's youth movement is the growing number of lethargic or apathetic members. Whatever the cause—disillusionment, lack of identity—the result is in direct contrast to organized labor's one-time ability to muster the membership to work for its leaders. Now, most members stay home, allowing the dissident elements within a union to exercise influence out of proportion to their numbers.

Kheel sees as one cause for contract rejections an increasing attack on leadership per se. "It is one of the sicknesses of our times," he says. "We attack leadership and the result has been that many leaders now run to cover." Eisenberg concurs:

> Union leaders did have a freer hand in another era. Now, the character of leadership is changing. New members are not coming in by voluntary means, and this brings a tendency to resent leadership. Unions have tried to overcome this—fine those members who don't attend meetings, conduct educational programs and publish shop papers and, in alert unions, bring in shop stewards of a representative age.
>
> I suspect that the rejections of collective bargaining settlements we have been experiencing in the last couple of years are the reaction of workers responding adversely to the establishment, including the unions to which they belong. There is a sort of competition. Union members are expecting of their unions at least as good a result as non-union workers are getting from the government. But no matter what the union will do, the settlements will be turned down.
>
> The repudiations are not a result of contracts, because the contracts are often good, but they are a result of some other factors. There is no test of reasonableness.

A factor contributing to any mass action that repudiates leadership is internal politics, and latter-day labor unions, being politically sophisticated, are no exception. Simkin, in his study, found politics to be the second most cited cause of rejections. The first was contract agreements reached elsewhere.

"In a sizable number of situations," he writes, "the union leadership handling the negotiations was elected by a narrow majority. The strong minority group may have opposed the agreement primarily because it was negotiated by the opposition. Or, a quantitatively weak but very vocal minority may rally enough support from others who

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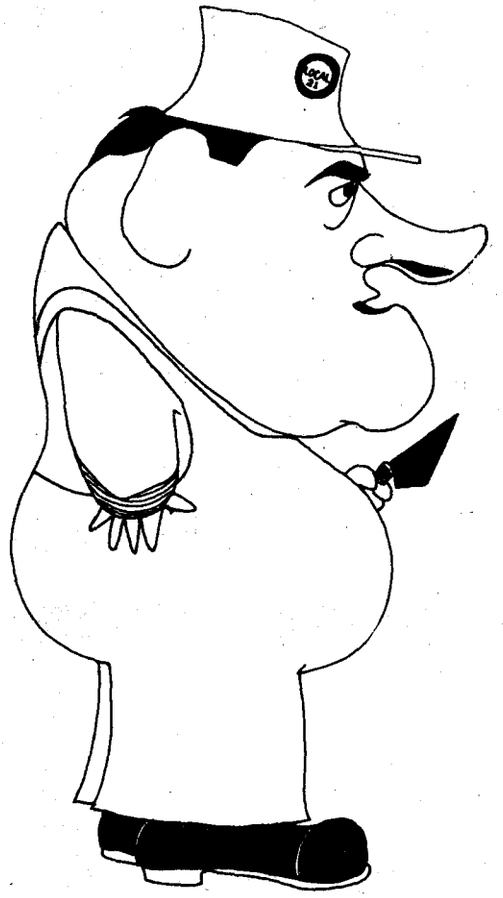

Noonan

are dissatisfied for other reasons to promote a negative ratification vote."

Dissident elements find support from special interest groups within the membership, such as blacks or women, who feel that management has treated them unfairly and that the current union leadership has been unresponsive. Also, skilled workers, who have prided themselves on this wage advantage over the unskilled, have lately become restive because of an apparent closing of the gap, and they lend their support to a dissident group that pledges them pre-eminence once again.

But whenever the causes are discussed, youth plays a key role. As Simkin writes, "The fact that the work force at many plants is now composed of an increasing percentage of young, low-seniority employees creates sharp differences as to how a total economic package is to be divided between cash wages and security fringes."

The union leadership may very well have negotiated a contract that was representative of the membership, but younger members, unconcerned about a pension program won in the contract, muster strength at the ratification meeting and manage to reject the offer. These younger members are satisfied that their elders have received a fair pension plan, but it will be many years before they themselves can take advantage of it, and they want higher wages now.

Arvid Anderson, chairman of New York City's impartial Office of Collective Bargaining, says, "I think some of the rejections result from the belief, 'O.K., turn it down and we'll shake the tree a couple more times.' " Julius Manson, former executive director of the New York State Mediation Board, holds a similar view: "The tendency to repudiate contracts will continue so long as it is believed that with repudiation of a contract there will be more put into the kitty."

McDonnell cites as an example of this attitude a recent strike by New York City garage attendants, a dispute that his office mediated. The negotiations reached an impasse and a strike was called. After a few days the union leadership and the management reached a tentative agreement. But at the ratification vote the membership rejected the offer. Management then announced that it was refusing to negotiate further, that it had bargained in good faith with the appointed leaders, and if those leaders couldn't speak for the membership then it saw no use in resuming the talks. This stand apparently had its desired effect: cosmetic changes were made in the contract offer, and it was accepted in a second vote.

Another suspected reason for contract rejections is the tendency of leadership to take a militant stand at the beginning of negotiations, promising the membership impossible gains. Upon completion of the negotiations the membership remembers the unfulfilled promises. Schmertz says, "I have seen this heightening of expectations to the point where retreat from the hard collective bargaining becomes very difficult."

He adds that associated with this is the leadership's failure to inform its members of the nature of collective bargaining. "The specific details of the tedious bargaining, the give and take, where demands on one side are met with an equal amount of resistance, escape the membership," he says. "I think the leadership makes a mistake in portraying the negotiations in a much too simplistic fashion. When the leaders come out with something less, or something ground down, the members are dissatisfied."

Thus, the reasons for rank-and-file rebellions are varied and complex, and so are the suggested solutions. Simkin concludes his study: "There is no best solution. For the most part, solutions must be devised by the union and company involved within the framework of a specific situation."

One of the solutions most discussed is the elimination of the ratification vote. "There is always the possibility of wildcat strikes," says Schmertz, "but over a period of time the membership would accept it." The greatest obstacle to this remedy, Schmertz adds, is "the conflict on just how democratic a union should be and how strong the leadership should be."

McDonnell says, "There should be a law requiring the union leadership to settle a contract without membership ratification, and if the members don't like the result, they can vote the leaders out of office. If repudiations accelerate, management may refuse to negotiate. I could see management questioning whom it's bargaining with."

Manson says that one possible solution would be to develop "restraints . . . where it can be made plain that repudiated contracts simply won't be changed. There is another way to handle it, to have acceptance of a proposal by majority vote, but no strike action can occur without a three-quarter vote."

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It has been frequently suggested that Congress should enact strike curbs, especially in the public sector. "I think it will happen eventually," says Manson. "I think we are approaching a collision course in the strike situation, particularly with public employees."

Eisenberg sees two possible outcomes to the repudiation problem: "It could be a momentary, temporary phenomenon, and we can wait it out, or it could become a fixture of the system. It could replace the institutionalized bargaining method. If Congress finds there is no way to cope with the phenomenon, it could look into the strike as a weapon and legislate strike controls. There is already talk of such things."

This talk includes banning strikes by public service unions, and substituting mandatory compulsory arbitration. "I'm very skeptical on the enforceability of anti-strike legislation," says Schmertz. "As for compulsory arbitration for public employee unions, it's too late, the unions are too strong."

His answer would be "a type of structure where the parties, on a voluntary basis, would use a forum which blends merit, fact and a sufficient amount of pragmatism without exerting economic pressure. The normal collective bargaining structure would be used."

Kheel would not look to legislation or any form of mandated action. "I don't see the rank and file changing, but I do see the professionalism of leadership changing. Every action must have a reaction. You have to teach the rank and file the importance of following, and teach the leadership the importance of leading. The solution to the problem is development of leadership that will be followed. You just don't legislate leadership." □

The Burger Court & the Penal System

SOL RUBIN

Mr. Rubin, counsel for the National Council on Crime and Delinquency, is the author of The Law of Criminal Correction *(West Publishing Co.). He is completing* The Supreme Court's Failure in Criminal Law.

When Warren Burger took office as Chief Justice of the United States, he emphasized in his first major speech, to the American Bar Association—and he has repeated it many times since—that it is all very well to reform the criminal law with respect to procedure, but that the American penal system is also failing in many respects, and we must cure *its* ills. He said to the Association of the Bar of the City of New York: "We take on a burden when we put a man behind walls, and that burden is to give him a chance to change. . . . If we deny him that, we deny him his status as a human being, and to deny that is to diminish our humanity and plant the seeds of future anguish for ourselves." In a speech to the National Association of Attorneys General in February 1970 he urged the states to develop methods for hearing "promptly, fully and fairly" the grievances of prisoners. He suggested that reform could come through rules of court, legislation, "or whatever means is available."

One of the means available is litigation, and there has been a great upsurge in recent years of petitions from prisoners, directed not so much to their trials but to abuses in the prison system, and raising sharp constitutional issues. These have achieved a fair measure of relief and some significant reforms through decisions in state courts and in federal courts below the Supreme Court. But litigation has as its goal rulings by the highest court of the land, which alone can speak with final authority. Without it, the excellent decisions on corporal punishment in prison, solitary confinement, censorship, etc., have little influence outside the jurisdictions of the courts handing them down.

The Supreme Court has as great a power to affect penology as it does to affect other aspects of criminal law; but peculiarly, with all the many rulings it has handed down in the past generation on criminal law, it has said or done hardly anything on law that affects sentencing and imprisonment. This was as true of the Warren Court as of the Court in earlier years. During its sixteen years the Warren Court handed down little more than half a dozen decisions affecting penology, and not all of them were good. In *Johnson* v. *Avery* it held that a "jail-house lawyer" may not be punished for assisting a fellow inmate if no other legal assistance is provided. But the Court has *not* declared that a prisoner who wishes to undertake a court review of some aspect of his sentence or treatment in prison is entitled to a lawyer to help him. In *Lee* v. *Washington* it held that racial segregation in prisons is not permitted.

The Court declared that, upon retrial and a reconviction, a new sentence may exceed that imposed on the first conviction, if justified by the judge on the basis of new information. A minority of the Court thought this improper, as constituting double jeopardy. The Warren Court held that jail inmates, though not finally convicted, are not entitled to absentee ballots under the Illinois election law.

By such minimal attention to this aspect of law the Warren Court merely carried on an attitude that has always prevailed in the Supreme Court. It has always neglected the law of criminal correction, and where it has ruled on the plight of prisoners, or persons being sentenced, it has generally ruled against them. So far as the Court is concerned, the Constitution has stopped at the prison gates; to a considerable extent it stopped once a man was convicted and was being sentenced.

However, one might have expected, from the vigor with which Chief Justice Burger expresses his awareness of prison problems, that the Court's attitude—or at least his own as Chief Justice—would change from "hands-off" indifference to a sensitivity toward constitutional issues in sentencing and imprisonment. Those of us who so hoped have been utterly disappointed. Having alerted the

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bar and the public to the need for reform in the area of sentencing and imprisonment, the Chief Justice has done nothing. The Burger Court has issued no rulings in this field, and has thus far accepted no cases for review, except a very limited review in cases involving the death penalty, a subject I shall look at in a moment.

What *should* the Court be doing? If it did apply the Constitution to sentencing and imprisonment, what are the issues? There are many, they are substantial, and their avoidance is a contribution to the troubles in our prisons.

The Eighth Amendment to the United States Constitution forbids the infliction of cruel and unusual punishment. Astonishing as it may seem, not a single kind of physical punishment has ever been condemned by the Supreme Court of the United States, nor does *any* kind of punishment stand condemned. In a case that has been mistakenly called a "leading case," *Weems* v. *United States,* decided in 1909, the Supreme Court condemned and invalidated a sentence calling for the chaining and other punishments of a defendant in the Philippines. But this decision, applicable in a foreign land, considering a foreign law, has never been applied by the Court to strike down equal and worse abuse of prisoners in this country.

An escapee from a Georgia chain gang sought to resist extradition on the ground that his treatment in Georgia was cruel. The U.S. Court of Appeals agreed, and ordered him discharged. But the case went to the Supreme Court, which sent him back. When the problem arose again, in a case involving the return of an escapee from the Alabama prison system, Justice Douglas said: "If the allegations of the petition are true, this Negro must suffer torture and mutilation, or death itself, to get relief in Alabama. . . . I rebel at the thought that any human being, Negro or white, should be forced to run a gauntlet of blood and terror in order to get his constitutional rights." But his was a minority opinion. The Court, in *Sweeney* v. *Woodall*, sent the prisoner back. It has yet to declare any physical punishment of a prisoner to be in violation of the Eighth Amendment, although other courts, both state and federal, have done so in the last few years.

The famous case of *Robinson* v. *California* is said to be an application of the Eighth Amendment by the Supreme Court. In that instance, the Court held that a person could not be convicted as a criminal for being a drug addict if he neither possessed nor used the addicting drug. This did nothing for drug addicts. Possession is still a crime, and addicts are still being committed in California and elsewhere. They are being committed under a procedure said to be "civil" rather than criminal; but they are in a prison system, nonetheless. In the Robinson case the Court said: "Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold," or being an addict. Then how can it justify years of compulsory incarceration of addicts under a fiction of "civil" commitment?

Yet the Robinson case had one good result. The fact that the Supreme Court "applied" (although it misapplied) the Eighth Amendment, at the same time declaring that it was applicable to the states, led other courts, both state and federal, to begin condemning cruel treatment in prison, particularly solitary confinement in "strip cells," where the grossest indecencies in treatment are imposed on naked prisoners in bare stone cells.

One case involved the California Correctional Training Facility at Soledad (where other violent events led to the killing of a judge and three prisoners). The U.S. District Court opinion contains a vivid factual description of the prisoner and the cell—the filth, the lack of light and heat and ventilation and means to clean the body. Most of the time the prisoner was naked. No medical care was provided.

The decision read: "In the opinion of the court, the type of confinement depicted in the foregoing summary of the inmates' testimony results in a slow-burning fire of resentment on the part of the inmates until it finally explodes in open revolt, coupled with their violent and bizarre conduct. Requiring man or beast to live, eat, and sleep under the degrading conditions pointed out in the testimony creates a condition that inevitably does violence to elemental concepts of decency." The innovation in all this was not the prison conditions but the fact that a court finally acted.

Similar conditions in New York's Clinton State Prison, at Dannemora ("the subhuman conditions alleged by Wright to exist in the 'strip cell' at Dannemora could only serve to destroy completely the spirit and undermine the sanity of the prisoner") were condemned by another U.S. court. In both states the administrators defended the practices. The warden at Dannemora said that it was "strictly routine treatment for a violation of prisoner discipline." But solitary confinement of gross duration and indecent conditions continue; and will until the Supreme Court acts.

The Supreme Court has refused to condemn sterilization of convicts as cruel and unusual punishment (although state courts have); and in one case it refused to do so with respect to a man on probation, who was ordered sterilized by a California judge as a condition of probation. The Supreme Court refused review.

So much for physical punishments. But similarly, no other kind of punishment has been condemned under the Eighth Amendment. In one opinion the Court declared that depriving an individual of citizenship was a new and cruel punishment, and seemingly condemned it for any crime; but on the same day it handed down another opinion that held quite differently, and denationalization is still a lawful penalty.

An old Michigan case declared that punishing a druggist who violated a liquor sale statute by preventing him from conducting his business for five years after conviction constituted cruel and unusual punishment. But Michigan is the only state in which criminals do not lose civil rights; and presumably this will continue to be the pattern until the Supreme Court acts.

One area of complaint that recurs again and again in prisoners' lists of grievances, whether coming out of a riot, or in a petition, or in litigation, is that of parole. Contrary to the generally accepted view, the introduction of parole has *not* led to releasing prisoners earlier. Instead, it has resulted in prison time being lengthened. Parole has been *added* to prison time, not taken out of it.

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Nevertheless, parole remains the standard way that a prisoner is released before the expiration of his maximum term. What, then, are the prisoners' grievances? That parole is secret; without standards; granted or withheld without a hearing; the prisoner lacks the assistance of an attorney; there is no way to have unfair denials of parole reviewed. And finally, that the courts will neither require a fair procedure nor review unfair decisions.

Parole consideration, theoretically by a board, often by one or two members, is very much like sentencing. The sentencing judge's decision is essentially whether the defendant will go to prison or not; the parole board's decision is whether the prisoner will be released or not. Probation (granted by the judge) and parole (granted by the parole board) are alike in that the probationer and parolee are subject to similar conditions of behavior; they are supervised (often by the same officer) and the conditional freedom may be revoked if a condition is violated.

But the procedures are quite different. The sentencing hearing is public, a record is made that is reviewable, the defendant is represented by counsel. The parole hearing is secret, whatever record is made is not available to the prisoner, and not only is the prisoner not represented by an attorney but there is no hearing, nothing more than an interview, or a brief occasion for the prisoner to appear and say something.

In most serious cases, a defendant who is being sentenced has been subject to a pre-sentence investigation, and in most instances he is either advised of adverse information or is shown the report. He can controvert the report and bring witnesses. He has none of these rights in parole.

The Supreme Court has on a few occasions upheld this process, on the flimsy reasoning that parole is a matter of "grace," the granting of a privilege. Numerous parole appeals go to the Supreme Court, perhaps more from California than any other jurisdiction; and repeatedly the Supreme Court's response is "*certiorari* denied." I mention the California cases because the abuses there exceed those in other jurisdictions. In California the parole board (called the Adult Authority) receives prisoners with a maximum term, and it has the obligation to fix the term. Some other parole boards have this authority. In California the board can also *refix* the term. Thus in one case a prisoner whose sentence had been fixed at six years had it refixed at ten and a half years, because of a prison infraction. The term was upheld, but no judge could do that. It is a flagrant violation of the right not to be put in jeopardy twice, under which a judge cannot increase a sentence once it has been fixed. Furthermore, the increase was for a prison infraction—in effect a four-and-a-half-year term for a prison incident that is not defined as a crime. The Supreme Court has shown no interest in taking parole cases.

American prison sentences are much more severe than those imposed in the countries of Western Europe, where sentences are rarely longer than a year or two. Sentences of ten years, twenty years and more, common in this country, are very rare elsewhere.

Every pardon and parole board hears of unfair and unequal sentencing, prisoners complaining that their sentences are unfairly long as compared with others whose crimes were similar, and there being no other difference in backgrounds to justify a longer term for one than for the other. All judges at their sentencing institutes wail about disparity of sentences; but they do little to correct the situation.

Again, the source that restrains appellate courts from correcting excessive sentences and attempting to correct unequal ones is the Supreme Court of the United States. The Eighth Amendment prohibition of cruel and unusual punishment could well be applied to excessive sentences, and a few courts have done so. The Fourteenth Amend-

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ment requirement of equal protection of the laws has been said by the Supreme Court to apply to sentences—but in practice it denies it has the power to correct unequal sentences. If sentences are not void because they exceed the maximum of the statute, the Court says it has no power to interfere.

A few courts have struck down sentences because they were unequal, and in other cases because they were excessive. Lately, the New Jersey Supreme Court has ruled that a prison sentence for a first conviction of marijuana possession is invalid for that reason. The Court of Appeals for the District of Columbia said in *Watson* v. *United States* that a ten-year prison term for drug possession was invalid—"We are constrained to hold that on this record the sentence imposed is a cruel and unusual punishment in violation of the Eighth Amendment." For technical reasons, the ultimate disposition of the case was changed; but when will the Supreme Court examine such an issue?

Until it does, it chills the other courts. In another case the U.S. Court of Appeals for the District of Columbia said that because of Supreme Court pronouncements "for more than 70 years federal appellate courts have declared themselves impotent to modify sentences imposed within statutory limits. . . . Occasional judges have expressed bewilderment concerning the origin of the rule, and have noted the strange contrast it presents to the role of appellate courts in reviewing abuses of discretion in other areas." But, it says, the Supreme Court has accepted this position "with only the most summary comment."

Associate Justice of the Supreme Court Stewart, when he was on the Court of Appeals, said, "It is an anomaly that a judicial system which has developed so scrupulous a concern for the protection of a criminal defendant throughout every other stage of the proceedings against him should have so neglected this most important dimension of fundamental justice."

I have mentioned capital punishment and the issue of cruel and unusual punishment. The Court has just ruled on some procedural aspects of the death penalty, giving no relief to those now on death row. New issues will no doubt be presented to it, but the least likely result would be its condemnation of the death penalty as unconstitutional.

There are basic constitutional reasons for striking down the death penalty that are easy for anyone to follow. One is the most obvious one of cruelty. I will not take the space to repeat the gruesome descriptions of what happens in executions by gas, by electricity, or other ways. That they are gruesome, witnesses to them have testified, and by any meaning of the word "cruel," they are cruel. But the Supreme Court has upheld every means of execution, and shows no inclination even to examine the question of cruelty.

One other constitutional argument against the death penalty, a simple one, should doom it. It inevitably deprives any person who has been executed of due process of law. When the condemned man is executed, any errors in the proceedings are placed beyond the reach of later decisions.

The prejudiced-jury case, decided by the Supreme Court, has held that a death sentence imposed by a jury from which were excluded men who indicated they were opposed to the death penalty, was not representative of the community. This new doctrine, the Court held, is retroactive. It applies to those in death rows all over the country. But it also means that, among those who have already been executed, there were many whose cases would have to be reopened—if they were alive. Their execution deprived them of due process of law.

Furthermore, a dissenting opinion in the jury case held that the majority did not go far enough. Justice Douglas said: "I see no constitutional basis for excluding those who are so opposed to capital punishment that they would never inflict it." Suppose that juries, conforming to the present standard, decree more executions—and that presently, as has happened often, the dissenting view becomes the majority view. Anyone executed in violation of what is now the dissenting view, but becoming the majority view, would be in a legal position to challenge his sentence—if he were alive. Due process too late is due process denied, decidedly so in death-sentence cases. The Supreme Court invalidated the death-penalty provisions of the federal kidnapping law, but six men were executed under that law.

Yet it is unlikely that the Court will use this evident denial of due process to strike down the death penalty. It shows no interest in denial of due process in parole cases. It has yet to examine and act on cruelty in prison; or excessive and unequal sentences.

Prisoners are pleading to be heard—not to deny their guilt, or protest the punishment they have received, but seeking what Chief Justice Burger says they merit—the decent treatment that alone can help them as human beings. It is an act of terrible desperation when prisoners riot, yet they do. Unlike students, unlike blacks on the streets, unlike other minorities, when prisoners demonstrate they face highly problematical relief, but certain reprisal at the hands of prison administrators, if not prosecution on new counts that will add additional years to their sentences. If prison administrators do not hear them, and then—when laboriously, without the assistance of lawyers, they prepare writs that often have merit—the courts, and particularly the Supreme Court, do not hear them, what are we to expect? □

LETTERS *(Continued from page 770)*

New Left. There is a grave danger that this pernicious measure may be maneuvered out of the Rules Committee by Chairman Colmer of Mississippi ahead of the honest repeal proposal.

The Obstruction of Armed Forces Act, H.R. 587, introduced by Congressman Bennett of Florida, would punish perpetrators of civil disobedience as felons.

These measures will, in all likelihood, pass the House because the Southern bloc votes consistently with Northern reactionaries on them, despite the vigorous opposition of the Democratic Study Group. There is a gambler's chance to stop them in the Senate if enough opposition is voiced. Letters are wanted to all legislators in Washington urging opposition in the name of democracy and human decency.

Sylvia E. Crane, Vice Chairman, National Committee Against Repressive Legislation; Chairman, Civil Liberties Committee of New York State Americans for Democratic Action

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BOOKS & THE ARTS

Low Life in the Grand Manner

HOGARTH ON HIGH LIFE. *The* Marriage à la Mode *Series from Georg Christoph Lichtenberg's* Commentaries. *Translated and edited by Arthur S. Wensinger with W. B. Coley. Wesleyan University Press. 150 pp. 18 plates. Boxed $35.*

CHARLES LAM MARKMANN
Mr. Markmann, a frequent contributor, is a journalist, critic, novelist and translator. His latest book, The Noblest Cry *(St. Martin's Press), is a history of the American Civil Liberties Union.*

Georg Christoph Lichtenberg, an astronomer and experimental physicist, was professor of natural science and philosophy at the University of Göttingen until his death in 1799. He was also one of the last scientists who was not afraid of the humanities. Professors Wensinger and Coley, the translators and editors of this magnificent volume, have paid him the tribute of scholarship as scholarship ought to be, full-fleshed and breathing; and enjoyable. Not once is there the faintest whiff of what Joyce called "the true scholastic stink."

Like so many cultivated Germans before and after him, Lichtenberg was a thorough Anglophile. England and the English seduced him from the first, and as much by their vices as by their virtues. For, whatever his professional credentials and his avocational accomplishments, Lichtenberg's true "field" was life and man. "Chief employment of my life, to observe people's faces," he asserted in a 1771 diary entry. He was no less astute at observing societies; Professor Wensinger in his warm-spirited portrait of Lichtenberg cites "his dismaying intuitive vision of a new order of slaves in an industrial empire" when he was taken to view Bolton's experiments in mass production in Birmingham, as well as his vivid prose documentary of Fleet Street "during the minutes just before eight o'clock on a December evening in 1775." Lichtenberg's love for England was of that remarkable kind that can embrace the beloved object just as it is, disguising nothing and apologizing for nothing. His prose and Hogarth's art resemble each other not least in the ruthlessness of their love for their subjects.

Both the artist and his admiring commentator are presented to best advantage by the arrangements of this volume. Hogarth's original six paintings for the series are reproduced in halftone, each on its own page. There are also six engravings of these paintings commissioned by Lichtenberg from the German, Riepenhausen. Finally, in fold-outs at the end of the book, so that the reader may open each and consult it as he reads the commentary on it, there are full-scale reproductions of Hogarth's engravings from the paintings (in contrast to the Riepenhausen engravings) left and right are reversed, a fact that must constantly be borne in mind as one reads. Furthermore, at the opposite point of the commentaries, marginal details of the plates offer enlargements of the matters under discussion. It would be difficult to conceive of a more thorough guided tour to be taken in an armchair. It would be equally difficult to criticize the quality of the reproductions.

Textually the book consists of an introductory note, in which Professor Wensinger explains the choice of content and his own remarkably successful endeavor to remain faithful in his translation to the mood and manner of the original; a much longer Foreword, also by Professor Wensinger, that is a compact, fascinating critical biography of Lichtenberg and an analysis of his Anglophilism; a flowing analytical account, by Professor Coley, of the artistic, social, political and historical background of *Marriage à la Mode* itself; the first complete translation of Lichtenberg's *Commentaries*, with his own Foreword, in which he explains his aims and his methods, sincerely apologizing for an inadequacy that is undetectable to the reader; then his own observations, in letters to various friends, concerning his *Commentaries*; Professor Coley's translation—the first complete one—of the only known contemporary prose commentary on the series, that by Hogarth's sometime neighbor, Jean-André Rouquet, which is believed to embody Hogarth's own interpretation of his work; and, finally, an anonymous poem published in February 1746: "Marriage A-la-Mode: an Humorous Tale, in Six Cantos in Hudibrastic Verse; being an Explanation of the Six Prints lately published by the Ingenious Mr. Hogarth." All these matters, moreover, are variously and thoroughly annotated: Lichtenberg by himself as well as by the editors, and each of the latter at times by the other; indeed, there are notes on notes. Not one is boring, though some of Professor Wensinger's explications of Lichtenberg might seem unnecessary for the reasonably well-informed reader. In general, the notes are as pleasurable and profitable as the texts to which they refer.

Both Hogarth and Lichtenberg were highly independent spirits, often at odds with the tenets and the manners of their time (Hogarth, it must be remembered, had been dead twenty years by the time of Lichtenberg's first visit to England; it was from the artist's widow that the commentator bought his set of prints) and incapable of reverence toward sham. As Professor Wensinger introduces us into Lichtenberg's life and thought—his influence was felt not only by his friend Goethe, but by such later writers and thinkers as Mann and Freud—so Professor Coley elaborates for the reader Hogarth's aesthetic and philosophy. This is fortunate, too, for Lichtenberg is far more the social than the artistic critic. Hogarth was dissatisfied with the arbitrary frontier erected by his contemporaries, under classical influence, between "high" and "low" styles, and determined to make legitimate his "modern moral subjects," as he called them—that is, his progresses, which to himself and Lichtenberg were in effect dramas in the theatre of the page; and he insisted that access to art should be limited to no class or group. Broad distribution was one of the bases for his championship of the print. Another was its susceptibility to copyright, an advance to which, Professor Coley tells us, Hogarth himself made a significant contribution. He was also no mean hand at the craft of public relations and advertising. Above all, like his friend Henry Fielding, Hogarth was a master of what the novelist called "the comic epic."

Of this Lichtenberg was totally and happily aware. Like his artist, he had a respectable gift for malice—not, let it be emphasized in both cases, for meanness. No human foible could elude the notice of either. Lichtenberg's verbal insights were marvelously matched to Hogarth's visual ones, and, if the commentaries are so densely peopled with characters and ideas, it is as much because of the pictures as it is because of the richness of Lichtenberg's imagination. Often, it is true, his intricate ex-

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POEM ON HISTORY

Ibn Saud is dead
and the gods in his head
are all dead too
who lived by oil
as his sons by scotch
and paid thirty thousand
a month all told
to live in a villa
on the beach near Voula

Gone are the wives and
the princes the fleet
of cadillacs and the two
bodyguards who held him up
but if the Greek
government is grieved
the landscape is unmoved
there have been kings before
and more than enough
to go around

"Scentless, colorless,
solitary, rock-loving—memory
is all of these"—echoes
that die in the trees
gypsies with performing
monkeys beating
tambourines great
beetles tied on strings for sale
beside the fish-rich sea
beside this un-
changed curve of bay

Kenneth O. Hanson

plications seem to go far afield, to become purely fanciful—the same might be said of the wealth of background detail in each of the plates; but they are never unrewarding; it is impossible to turn from them. Writer and artist alike, both as satirists and as pursuers of the speculative fancy, take us on a kind of associative voyage that is bewitchingly reminiscent of Sterne and Proust.

The scarcity of exclusively artistic discussion leaves one with no feeling of deprivation. The compositions that occupied Hogarth and Lichtenberg alike imply, as it were, their own aesthetic: what one might call the aesthetic of social process. What especially pleased Lichtenberg in all Hogarth's work—his admiration of it was inclusive—was its function as a kind of fluid portrait of society in motion. Both men were connoisseurs of human and social behavior and its moving forces, and both were endowed with superb wit as well as remarkable insight—Lichtenberg's, for example, into the dissolute earl's "compulsive spending out of sheer boredom." No sham was proof against either. Both were moralists though neither ever moralized. And both, for all their uncorrupted perceptions, essentially loved their fellow man even in those guises in which they would have preferred not to associate with him. It is part of their magic that these qualities are infused as well into the abundant but never intrusive notes.

Lichtenberg's letters about his work to friends, including Goethe, are almost deprecatory of his Hogarth commentaries which, he insists, were done purely for money. How fortunate he was to have been able to work at what he loved. Though he was almost constantly in great physical distress during the whole period of the letters, one's impression is of a man who clings to life not because he is afraid of death but because he so intensely enjoys every aspect of living that he cannot waste time or words on such minor topics as health. In the letters as in the *Commentaries* themselves his Anglophilism is everywhere; his sympathies for his own nation are somewhat less vivid, and he comes closest to malignity when he has to deal with the French and other lesser breeds. But it is notable that he refuses to descend to personal attacks on his own critics and enemies.

The possibly "authorized" explication of these plates by the French-Swiss enameler Rouquet, is the complete opposite of Lichtenberg's. It is first of all barely a twentieth as long, and it is almost completely "objective," matter of fact. Occasionally a dry wit crackles in it; for the most part, however, it is very nearly clinical, in contrast with the rich personalizations and fantastications of Lichtenberg. There are, too, minor differences of interpretation and of indentification of figures; indeed, at times the pictures lend themselves to debate over identities. But on the whole it is as if Rouquet were writing notes for a playbill that must on no account be permitted to intrude upon, let alone compete with, the play. Here again one must remark on the excellence of the translation.

The "hudibrastic verse" in six cantos —one to a plate—is very different from both the prose commentaries. It sets out to wound, assigning to each figure a half-spelled name and leaving no implication, no nuance of the artist unelaborated. It is very consistently funny, but always bitingly so: it is barren of the compassion that is so characteristic of Lichtenberg. As Professor Coley notes, it "postulates many details to which Hogarth's series contains no reference." Apparently there is no clue to its authorship, but it comes from a hand obviously skilled in satire and, at times, paraphrase on the verge of parody.

The volume contains a selected bibliography of books by and about Lichtenberg and studies on Hogarth; it includes as well the artist's own work, published in 1735, *The Analysis of Beauty*.

A handsome piece of bookmaking, *Hogarth on High Life* is a living re-creation of literary, artistic and social history that ought to have, as Hogarth himself preached, the widest possible circulation. It is deplorable in our age as in his that, the economics of culture having altered very little indeed, so splendid a portrait of a corrupt class should be priced beyond the reach of almost any except its successors. □

Just What Grows in Brooklyn

STEELWORK. *By Gilbert Sorrentino. Pantheon Books. 177 pp. $5.95.*

SHAUN O'CONNELL
Mr. O'Connell teaches English at the University of Massachusetts and writes for many magazines on modern literature.

Gilbert Sorrentino's second novel, *Steelwork*—a novel not about Gary, Ind. but about the steeling work of living and dying in Brooklyn between mid-depression and the Korean War—is most interesting primarily for the inventive and skillful way in which it tells its story.

If a novelist plans, as Jane Austen did, to tell of two or three families suffocated by "domestic life in country villages," then he could do no better than to follow her method; that is, write a tight, narrowly focused, chronological novel which moves through what Kurt Vonnegut has recently called the three stages of fictional development: "?, !, ." However, if a novelist wishes to range more widely—encompassing a vast social group and tracing the shifting relationships within that group as it moves through a generation of time—then he must devise a different method. He can, as Harvey Swados has recently and brilliantly done in *Standing Fast*, expand the size of his novel in keeping with the diversity of his group of people, and increase its scope to convey some of the effects the past thirty years have had on his characters, living through the roller-coaster ride of recent American history.

Writing a novel with the same social and temporal scope as *Standing Fast*,

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Sorrentino has devised an utterly different, quite original method of narration, and one that is equally successful. Apparently, his aim was to combine the intensity of a Jane Austen with the sweep of a Swados. Sorrentino's brief novel is made up of ninety-six separate but interlocking dramatic vignettes, scenes which, in their arrangement within the novel, scramble chronology. Thus, for example, we move from 1951, from a scene in which "Red Mulvaney came into Lento's looking for more Reds, or pinkos, at least, to beat up," to 1942, when young Pete viewed his job of hauling ashes and clinkers as "a Future. Advancement . . . in ten years he might be anybody"—and so on through a series of sketches which dramatize the varieties of despairing experience through which various Americans lived between 1935 and 1951.

A literary method, though, is chiefly interesting for what it accomplishes in a given work. Swados' detailed chronological treatment has the cumulative effect of forcing the reader to experience along with the novel's characters the accretions of time and circumstance, making him a witness to the telling attritions and faint accomplishments of those who tried to stand fast in their radical political commitments between the late thirties and the early sixties. That is, Swados' method attempts to extract coherence from bizarre public and private behavior over a broad span of time. The effect of Sorrentino's literary jump-cuts is quite different. While it is possible to see in *Steelwork* progressive degeneration—as the dust jacket says, "the collapse of a basically decent, homogeneous, and honorable group of people into a greedy, ignorant, and slipshod conglomeration, corrupted by money made available by the war economy"—one has to look for it. The almost arbitrary arrangement of revealing incidents in the narrative has the effect of destroying the sense of coherence one might extract from time and circumstance. Sorrentino's method convinces the reader that he, along with the novel's characters, is caught in a great web of senselessness. That is another way of saying that *Steelwork* unfolds in a manner that suits the author's theme and strikingly conveys its mood.

The vision that emerges from *Steelwork*'s kaleidoscope is perhaps less original than the novel's structure. Sorrentino is at times too much under the sway of that other chronicler of Brooklyn lives, Hubert Selby. Many of Sorrentino's characters seem derivative from *Last Exit to Brooklyn*. Like Selby, Sorrentino sees a world circumscribed by unrelieved frustration and senseless violence. How-

"McCarthyism did not die with McCarthy..."*

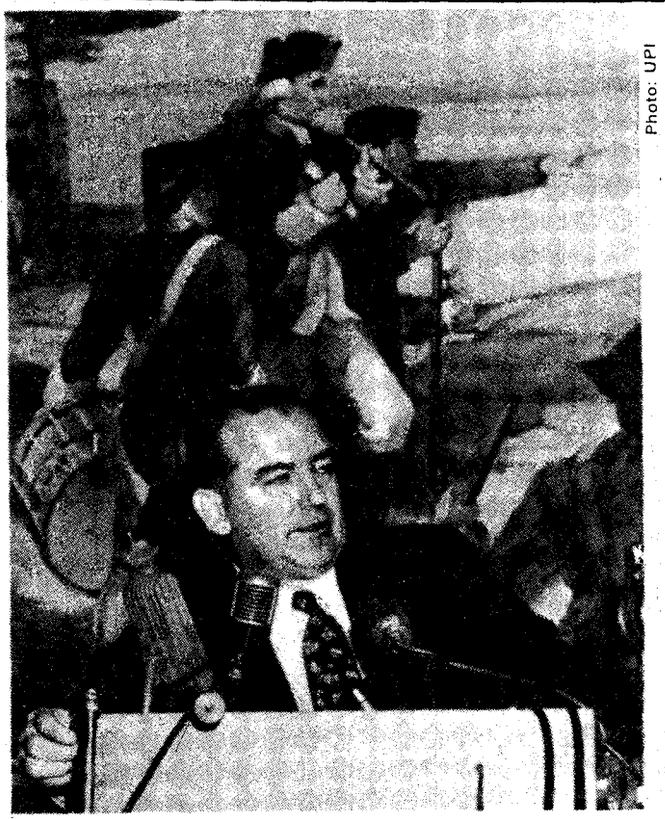

Photo: UPI

*"The rhetoric and tactics of the [1970] campaign, masterminded by President Nixon from the White House, were purest Joe McCarthy. When George Wallace spoke and, later, Vice President Agnew, they appealed to the same dark, atavistic recesses of the American spirit."
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—H. H. WILSON, Professor of Politics, Princeton University

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ever, Sorrentino is able to go beyond Selby's insular view of the world. He is quite able, for example, to create moments of personal release, small triumphant times amidst the tawdriness, in a style rich with the details of the past recaptured. The glorious and smelly world of Saturday afternoon matinees in the late thirties:

> Sometimes a free creamsicle, a comic book with the cover ripped off, anything, get em in! A double feature, five cartoons, coming attractions, a Pete Smith specialty, a Robert Benchley short, a travelogue *Wonderous Waves of Waikiki*, some theaters a race, the winning ticket got a bicycle, a pair of roller skates, an Erector set.

Sorrentino, a writer of considerable stylistic range, is able, too, to rein in this headlong, galloping prose—evocative of the breathless hysteria of kids at those matinees—and show in lyrical detail the kind of minimal satisfactions these same boys can find for themselves as they grow up in the forties.

But to say that is to suggest Sorrentino's limits. He has chosen to plunge us into an alien, underwater world, bringing us to the surface now and then to contemplate that most fashionable of clichés, American civilization as terminal ward: "the cumulative effects of Americanism, eating at the soul, thence spreading throughout the whole organism in symptoms of alcoholism or other social despairs." That gloss is, I think, too easy. But, if the vision of *Steelwork* is, in the end, somewhat circumscribed and pat, there is more than enough richness in Sorrentino's flexible style and inventive narrative to redeem his novel—artful, compressed and striking. □

Where Id Was, Let Ego Be

INSIGHTS AND ILLUSIONS OF PHILOSOPHY. *By Jean Piaget. Translated by Wolfe Mays. World Publishing. 232 pp. $8.95.*

MARTIN LEBOWITZ

Mr. Lebowitz has contributed to The Journal of Philosophy, The Kenyon Review *and other publications, and to two anthologies,* The Critics' Notebook (*University of Minnesota*) *and* The Kenyon Critics (*World*).

This volume reflects a familiar dilemma: the circularity both of philosophical reasoning and of the reasoning of philosophy's critics. Piaget tells us:

> Philosophers have for long believed that they have the right to speak of every question without making use of the [scientific] methods of verification . . . [taking] the results of their reflections as a form of knowledge, and even as a higher form.

In essence, his position is that philosophy has traditionally had a twofold aim: knowledge and the "coordination of values." Yet this aim can only lead to a "wisdom" or "rational faith" rather than knowledge in the proper sense of objective or "interindividual" criteria of truth. Philosophy is at best a speculatively rational system of motivations. The scientific method does indeed begin, "heuristically," with reflection, but it also requires the element of "cognitive verification"—deduction plus experiment—in order to constitute truth.

Piaget points out that French psychology has existed on the fringe of official institutions and in constant struggle with the powers that be of academic philosophy: "one must have a certain heroism in order to study psychology in France." Thus he favors an academic requirement that philosophers receive an intensive education in the sciences—while ironically quoting the remark of a colleague that psychopaths are naturally drawn to the study of psychology.

Yet Piaget says at one point that "all experience is a structuring of reality in which the epistemological subject takes an active part, of such a sort that knowledge appears as an interaction between the structuring operations of the subject and the properties of the object"—an unmistakably metaphysical belief.

He tells us that he did not begin his career with a prejudice against philosophy, having held a chair in that subject until 1929. He gives reasons for his subsequent disenchantment:

> The first is that nothing is more provocative of self-examination than the start of a teaching career in philosophy, where one is completely free to develop no matter what idea, where one succeeds much better than one's audience in achieving a clear awareness of degrees of certainty. . . . P. Janet had clearly shown that internal reflection is socially internalized conduct: a discussion or deliberation with oneself, such as one has learned to conduct with others, and in the course of which the same skills can well be employed to persuade oneself as are used in persuading others. . . . There is a kind of intellectual dishonesty in making assertions in a domain concerned with facts, without a publicly verifiable method of testing, and in formal domains without a logical one.

The second reason was the surprising dependence, apparent to Piaget after the First and Second World Wars, of philosophical ideas on social and political conditions. Most interestingly, he writes of the academic and intellectual influences in Switzerland corresponding to the rise of fascism: "a kind of Italian neo-Hegelianism under the name of psychology . . . a model of 'autistic' philosophy . . . [as well as] a philosophical anthropology that aimed explicitly at replacing psychology."

Piaget's dissatisfaction with philosophy had a third cause that provided an especially powerful motive for his becoming a professional psychologist—"albeit one with interests centered on problems of epistemology." This was the attempt of certain philosophers "to meddle in scientific research." Piaget discovered that he and the philosophers in question no longer spoke the same language. He became increasingly convinced that the function of philosophy could be nothing more than "the coordination of values." On the other hand, he believes that science is "indefinitely open" and can investigate any problem, provided a method can be found for doing so upon which scientists agree. Moreover, where verification is concerned, the problems of science and philosophy are in principle the same.

Nevertheless, Piaget acknowledges the epistemological influence of Kant and such followers of his as Brunschvicg and Myerson, while repudiating Compte and positivism. The point is that Piaget's studies had convinced him of the epistemological role of the "subject's activities" and of "causal explanation": positivism, he says, is a form of epistemology that neglects or underestimates the activity of the subject in favor of verification or the generalization of the verified laws, whereas the hypothetical nature of scientific knowledge is its essential characteristic. Piaget is a sort of pragmatist or behaviorist; the operational theory of meaning is for him both a system of psychology and an expression of the scientific method—the method of hypothesis, deduction and experiment.

Thus it is easy to criticize his attack on philosophy, since so much of modern philosophy is concerned with methodology, logical refinements and the techniques of verification. Indeed, his repudiation of positivism and his critique of empiricism suggest that the balance between rationalism and empiricism increasingly favors rationalism—the growth of conceptualization or of systems—in the case of the more advanced sciences. Piaget might be said to belong to the French tradition of celebrated epistemologists—pre-eminently Duhem and

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Poincaré—the ancestor of whose rationalism is doubtless Descartes.

It might be better, too, if Piaget called his field of endeavor genetic psychology rather than genetic epistemology, the two subjects being theoretically distinct. Genetic epistemology might refer, properly speaking, to the logical evolution of the techniques of verification, a question to which purely psychological considerations are irrelevant. Indeed, the "rational reconstruction of science," as Reichenbach phrased it, is related to psychology or psychological causation in the precise sense that logic is related to the genetic fallacy. It is a question whether the work of Piaget is not a potential source of obscurantism.

Here is one of his most interesting arguments:

> We have for some years ceased to be faced by the classical alternatives of mechanism or vitalism, chance or finality, etc., because of conceptions of a third type such as the organicism of Bertalanffy, and especially cybernetics, which lies exactly halfway between physics and living phenomena, which enable us today, by means of models of a strictly causal order, to take account of specific properties of the organism: [self-regulation], equilibrium, etc.

This point of view is reminiscent of the Freudian theory of instinct, which may have inspired it, and again it raises a question of the relation between logic and psychology. (A solution of this question might define the nature of metaphysics as well as that of "genetic epistemology"; the strict distinction between logic and psychology may in fact be part of the contemporary effort to avoid or discredit metaphysics.) Piaget's concepts of equilibrium and mechanical self-regulation recall the Freudian theory's concern with the preservation of a given condition of stability. But it is a question if the concept of determinism allows the triple distinction that seems plausible to Piaget; I suggested about a year ago in *The Journal of Philosophy* that the solution of the problem of freedom versus determinism —or of teleology versus mechanism— might lie in the concept of game-playing, the point being that finalist assumptions may *not* be essential to an understanding of organic processes and human behavior.

Piaget devotes a good deal of space to refuting contemporary philosophers who exemplify the pretensions of philosophy or "philosophical psychology" to a special type or order of insight. For example, Bergson asserted confidently that intelligence is unable to comprehend life, being adapted rather to the apprehension of space and unorganized matter—and only, moreover, in their static and discontinuous aspects. Piaget's reply is that intelligence arises from action in general; logic and mathematics do not express the special form of certain objects but rather a general coordination of actions irrespective of the nature of their objects. He points out that in Bergson's famous cinematographic metaphor he argues as if intelligence is reducible to images. Thus Bergson neglects the existence of operational or motor activity, which insures the development of intelligence and in which intelligence may be said to exist. Piaget says that it is difficult to see how mathematics can apply so admirably to physical reality if the logico-mathematical structures aren't deeply rooted in biological organization. The outcome of his pragmatism is thus a partially subjectivist or Kantian bias.

Finally, Piaget suggests that Sartre's existentialism raises a question about its author's personality: why this obsession with irrationality in so intelligent a writer? Now, Sartre regards the relation between meanings—psychical causation —as irrational and "magical." A psychologist who fails to agree that this point is of the utmost significance is an intellectualist who is distorting psychic experience. It bespeaks a point of view scarcely compatible with Piaget's final-

On the front page of the 'New York Times Book Review,' May 30, the author of 'Up the Organization' warns:

"It's getting late...What's left of free America is being eaten alive."

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MORTON MINTZ & JERRY S. COHEN
INTRODUCTION BY RALPH NADER

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ism and his scientific preoccupations. Yet, while Piaget fails to command complete agreement, the vigor and brilliance of his intellect are obvious. The irony is that the opinions he expresses amount after all to a sort of "philosophical psychology"—science as the rational essence of human motivation. □

Magistral Strokes and First Steps

RELEARNING THE ALPHABET. *By Denise Levertov. New Directions. 121 pp. $4.75. Paper $1.75.*

PAUL ZWEIG
Mr. Zweig's most recent book of poems is Against Emptiness *(Harper & Row).*

I have always admired Denise Levertov's poetry. Her sparse, sinuous language reminds me of an artist who is able to suggest a face, the entire mystery of a gesture, with a single, uninterrupted pencil stroke. The word "mystery" is apt, too, because that is what Miss Levertov's poetry seems so often to be concerned with: inner landscapes, nourished by strong emotion, by moments of recognition and self-recognition, which have the plastic energy of a revelation, as in this short poem, "Abel's Bride," from *Sorrow Dance*:

Woman fears for man, he goes
out alone to his labors. No mirror
nests in his pocket. His face
opens and shuts with his hopes.
His sex hangs unhidden
or rises before him
blind and questing.

She thinks herself
lucky. But sad. When she goes out
she looks in the glass, she remembers
herself. Stones, coal,
the hiss of water upon the kindled
branches—her being
is a cave, there are bones at the hearth.

The poem creates a mood of quiet, almost resigned understanding; as if the poet had come upon a flaw in the very architecture of life. When we read in the last lines that the woman's being is a "cave," we know we have been in that cave since the first words of the poem. Man's "blind and questing" sex has probed the cave. His face, opening and shutting, reminds us, by contrast, of that unclosing mouth in the earth which harbors a seething of energy ("Stones, coal, the hiss of water upon the kindled branches"), like a life going out, but also like a life exploding. The poem reveals to us a hidden byway linking the mystery of the human with the immense mystery of earth itself. It is the sort of connection which Miss Levertov's poetry creates so admirably that even grief becomes a manner of celebration, as the very title of *Sorrow Dance* suggests: the strong, half-controlled movements by which the body releases its sorrow become a way of shaping it, a dance of gestures, a poem.

I feel the need to describe the sort of pleasure Miss Levertov's poetry has given me in the past, because her latest volume *Relearning the Alphabet* is something of a disappointment. So many of the poems in the new book seem incomplete, as if the whole gesture of the hand and arm and body had been replaced by a fingerprint in midair. Instead of the poem, we are given some words indicating that a poem passed by that way, but did not stay long enough to leave its mark. Take, for example, this short poem, entitled "The Curve":

Along the tracks
counting
always the right foot awarded
the tie to step on
the left stumbling all the time in cinders

toward where
an old caboose
samples of paint were once tried out on
is weathering in a saltmarsh
to tints Giotto dreamed.

'Shall we
ever reach it?' 'Look—
the tracks take a curve.
We may
come round to it
if we keep going.'

Or the concluding lines of another poem, "The Rain":

The birds are silent,
No moths at the lit windows, Only a
swaying rosebush
pierces the table's reflection, rain-
drops gazing from it.
There have been hands laid on my
shoulders.
What has been said to me,
how has my life replied?
The rain, the rain. . . .

The description rambles; the poems seem to end before they are finished. It is of course possible for a poem to be taken up short in a way that suggests continued movement, reverberations of meaning. That seems to be what Miss Levertov intended here, but the effect is miscalculated. When I read the last words of "The Rain," I realize that I am still waiting for the poem to begin.

Perhaps in many of the poems the trouble lies in part with the subject. Miss Levertov is concerned with the experience of aging, for example, but at the same time she seems to avoid dealing with it explicitly, refusing to enter wholly into it:

So slowly I am dying
you wouldn't know it.
They say birth begins it.
But for three decades, four

the sky's valves lie open,
or close to open over again,
a green pearl revealed.

Slowly, slowly,
I spin toward the sun.

The poem takes place at a great distance from us. The feeling of weariness, the hope for a creation expressed by the image of the oyster and the pearl, are not elaborated or made human. They close before we reach them, so to speak, and we are left outside.

Another problem of subject matter is even more striking. A number of the poems in *Relearning the Alphabet* are political. But aside from the fierce, very beautiful: "Advent 1966," they tend to be rambling, uninventive. "Tenebrae," "Biafra," the long poem, "An Interim," and the even longer "From a Notebook," lapse into a sort of poetic journalese, more like prose—bad prose. There is a mood of sad self-righteousness in these poems which make them hard to experience for oneself. I know that Denise Levertov and her husband, Mitchell Goodman, have reasons for their sadness. They have been harassed more than most by the atmosphere of political repressiveness in America. Their involvement in the anti-war movement has been important. But that situation has not encouraged strong, generously conceived poetry, at least not in *Relearning the Alphabet*. One must reread Miss Levertov's earlier political poems from *Sorrow Dance* ("Life at War," "What Were They Like?") to know how powerful her conceptions in the matter can be.

In the past Denise Levertov has been able to create a taut, carefully observed imagery which has reminded me somewhat of the poetry of William Carlos

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Williams; at the same time, she never relinquished her English background. The result was a Williams-like directness and concreteness, combined with an ability to modulate into the sort of eloquence one finds in Yeats's language, for example. In the present volume, however, the Englishness intrudes in a new and unfortunate way. The poems tend to become "literary," establishing connections not with experience but with other poems. The connection is worked for, and acknowledged in "A Clock," whose epigraph is taken from Yeats's "A Coat." But what about "Wings of a God," which begins: "The beating of wings./ Unheard," and goes on to suggest "Leda and the Swan"? The shadow of the Yeats poem overpowers Miss Levertov's, as it would any lesser poem which insists, as this one does, on making the comparison.

The most striking example of "literariness" occurs in a section of the book entitled "Four Embroideries." By invoking, in these poems, a distant, purely conventional location (a castle where noblewomen are busy with their needles), Miss Levertov has sacrificed any actual sense of location. They are caught between fairy tale and the real world, and belong to neither. Again, this is the sort of effect which Miss Levertov has managed well on occasion (cf: the beautiful poem from *Sorrow Dance*, "Psalms Concerning the Castle"), but which seems out of control in the new volume.

Relearning the Alphabet strikes me, on the whole, as being a hurried book. In the past Miss Levertov has always been extremely productive, publishing a new volume regularly every two or three years. This time, I think, her insistence on keeping up the pace has done harm to the poetry. The title itself suggests the poet's desire to reinvent her vocabulary, to learn the skills of a new poetic language. Perhaps that explains some of the difficulties Miss Levertov encountered here; difficulties which might very well have been solved with more patience.

Although I have felt the need to be critical of *Relearning the Alphabet*, I would like nonetheless to call attention to a number of poems in the volume where Miss Levertov's best inspiration is still powerfully present: the moving poems "He-Who-Came-Forth," and "Moon Tiger"; the interesting long poem: "A Tree Telling of Orpheus"; these lines about owls, from "Secret Festival; September Moon":

They raise
the roof of the dark; ferocious
their joy in the extreme silver
the moon has floated out from itself,
luminous air in which their eyes
don't hurt or close . . .

The strength of Miss Levertov's language is impressive in such poems. I am very sorry they must be half-concealed among the lesser poems which, unfortunately, take up so much place in this volume.

Here is the final poem in *Relearning the Alphabet*, which is entitled "Invocation." It is lovely and haunting; meant, one hopes, as a promise for the future:

Silent, about-to-be-parted-from house.
Wood creaking, trying to sigh, impatient.
Clicking of squirrel-teeth in the attic,
Denuded beds, couches stripped of serapes.

Deep snow shall block all entrances
and oppress the roof and darken
the windows. O Lares,
don't leave.
The house yawns like a bear.
Guard its profound dreams for us,
that it return to us when we return. □

On Schedule and Without a Hitch

A PEEP INTO THE 20TH CENTURY. *By Christopher Davis. Harper & Row. 200 pp. $5.95.*

ROBERT STEINER
Mr. Steiner teaches at Bowling Green University, Ohio. His novel, The Qasida, *will be published early next year by Harper & Row.*

One of the outstanding qualities of Christopher Davis' seventh novel is also demonstrated by his fourth novel (*Belmarch*, Viking Press) and his sixth (*Ishmael*, Harper & Row). These books work as a triad, each affording a different perspective on the problem of man's right to murder, from Abraham's casting of Ishmael into the desert to the first electrical execution in this country—which took place in New York State in 1890. This peculiar quality of Mr. Davis is an ability to write boldly of moral matters without ever losing sight of fiction as art.

In his new novel Davis provides us with snapshots of a condemned man named Weber, who is to be the first killed legally by electrical means. Weber comes in contact with a confused, pathetic and in the final analysis vicious, prison chaplain named Snow, with Buxton the prison warden whose life is so altered by the events leading to the execution that it is as if he himself were being burned, and with an alcoholic jailer, McDade. We see each of them in glimpses, bits adding up to a sad whole. And there are other characters, awaiting not Weber's death only but the outcome of a battle between the Edison and Westinghouse electric companies. Whose equipment, whose system is to take the first fat chance at electrocution?

The spirit of the age was competition, and no man had competed as successfully as Thomas Edison. Davis did extensive research on the war between the two companies, and we see it in the fiction as ordinary politics over an ordinary problem: how to be well-rewarded for murder. The Edison Company, in trouble with its direct-current system, was attempting to prove that Westinghouse's alternating current, which would do the first killing, was unsafe for household use. The doomed Weber was to be the experimental animal.

We see the Wizard of Menlo Park only once, though we hear of his machinations, see his puppets, and view with an electrician named Taggart the Edison Paris Exhibit brought to New York City (including a performance called "A Peep Into the 20th Century");

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PANTHEON

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yet the idea presented in the novel of Edison and his immense power remains what it was for his own generation, that of a figure raised to an almost perverse spiritual plane—most apparent when finally we glimpse him:

> The sketch artist wandered off to one end of the room and was doing an odd-looking dynamo's portrait. Suddenly, as if by magic, the Wizard himself materialized; he was standing inside the doorway to the stairs, deep-browed, pale-haired in the shadowed loft, his body bent forward to hear, a hand resting on a piece of apparatus, Kennelly at his side, Sulze-Berger behind him. The reporter was silenced, and the artist turned toward the man hungrily.

It is through cinematic juxtaposition, so characteristic of the "structuralist" novel (e.g., Hawkes, Kosinski, Robbe-Grillet) that Davis creates deeply moving portraits and maintains ironic tension. His technical precision is so well-honed that we are at once within and without the book, able to see by this Flaubertian light both the pain and absurdity of what is happening.

We are swept up at last, as is Weber, into the singular belief that what is at stake is not the life of a man—a confessed ax murderer—but the future of merciful scientific murder. The characters steep themselves in the study of electricity; one of the author's most subtly grotesque scenes shows the Reverend Snow helping Weber to construct, of all things, a buzzer in his cell. Weber wants to know all that he can absorb about that which is to kill him. He rejects God, saying, "It won't do," and then he comes to think of dying well as a kind of trick; he can achieve the trick only after studying the master of his end—the alternating current.

The first electrical execution was bungled. The current was weakened and the condemned man suffered at a boil for eight minutes before he died; whether the Westinghouse system was tampered with is still a question. In Davis' novel Weber goes to his death playing out the "trick" as a convinced actor, proud to be the first, a special case, with a historical slot of his own.

Since the first electrocution before a fainting press was disastrous, a second man was hurried through death row soon after, before the electric war could be decided. (Thus far, it was a stalemate, the botched death proving only that Westinghouse had trouble killing people.) Here is where the novel ends, with the second subject strapped to the wooden chair—resembling a comfortable lounger—electrodes attached to his bald head and toes. Davis' book functions oddly as prophecy by hindsight, showing how it began, how simply synthetic morality stole upon us.

A Peep Into the 20th Century cannot help but move us; but it also forces us as well to value, a little more than ever before, a breath of good air when we can get it. □

FILMS

ROBERT HATCH

The quality of Robert Bresson's *Une Femme Douce* that evokes so much critical enthusiasm is, I think, the close, almost morbid concentration of the film. Attention is shackled so tightly to the despair of the protagonist (Guy Fragin), the world around his tragedy is so still, that the very air seems to thicken and we witness his solitary vigil as though magnified and rendered preternaturally clear by being submerged in a vial of glycerine.

That Bresson achieved the effect quite deliberately is evident immediately in the now famous opening scene—the chair and table rocking slowly on the little upstairs balcony, the brakes squealing to signal an emergency below, the white scarf floating down as though sinking into a crystal spring. The viewer is sealed into the confrontation between death and remorse from the opening frames, so closely a part of it that he may feel the picture beating like a heart. The husband paces the room where his dead wife lies —remembering, reasoning, exculpating, accepting—and the film seems to pace in step with him. The rooms, the shop below, even the liquid night of Paris seem to envelop the man's torment and to draw the spectator into it. To call such work hypnotic is to fall back on a cliché for want of a more evocative term.

But one does not stay in that state forever, and on emerging from it I found that *Une Femme Douce* had seduced me by its cinematic resources, but left my understanding unsatisfied. That happens, I believe, because of the distortions attendant on moving Dostoevski's story from Russia to France and from the 19th to the 20th century. The changes required are in the circumstances of the narrative, but these have a qualitative effect on the relationships at issue. There is an irreconcilable difference between being forced to resign one's commission because of alleged cowardice in an affair of honor and being dismissed from a bank because of alleged irregularities in the accounts. The two things are not apt to happen to one kind of man, and in this instance the shift removes much of the point from the scene on which the events turn. Dostoevski's hero, who knows that he was guilty, but not in the way charged, is obsessed to rehabilitate himself in his own eyes by dominating and captivating the gentle spirit of the girl he has married. Bresson's hero is not made to seem under any such compulsion (he has suffered a reverse and is bent on overcoming it), and since the age difference of the couple is seen to be much less on the screen than was stipulated by the writer, the doting possessiveness, the parasitic tyranny, will not graft onto their marriage. The handsome, somewhat arrogant, elegantly disciplined young pawnbroker appears rather beset by a stubborn coldness, an inability to appreciate his good luck rather than a reluctance to trust it. That is disagreeable, perhaps, but it does not seem lethal, as does the secret frenzy of the dishonored Russian.

And Dominique Sandu, who plays the wife, cannot convey the defenseless sensibility of the Russian original. She is quiet and she is in a bad fix, but she gives every appearance of being a Parisian university student, well up on what chances the world provides—one who, having consented to marriage as

A FABLE
(for Paul Bowles)

When the antelope first saw them—
hairless, on their hind legs,
moving in a pack across the veld—
a new terror flickered in his veins.

The lion, watching from the bush,
did not like their smell and slunk away.

But the hyena was pleased
at the arrival of the Upright Ones:
he rolled joyously in his vomit
at the thought of an earth covered with garbage.

William Witherup

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the chance offered to her, would not let herself be trapped more inexorably.

In short, one cannot see why these two fell into their fatal decline of cross-purposes, except that Dostoevski wrote it that way. But he wrote it about his people in his time, and Bresson has really stayed too close to a story that he could not bring over intact. By shifting the psychological factors he vitiated them, and he needed a new emotional armature for the film. But how explain why a girl, who might be recently from the lecture halls of Nanterre, would throw herself off a balcony because her husband had abruptly, and to be sure somewhat hysterically, broken through the estrangement that was debilitating them? Bresson wills it to work by the power of his visual grip on the story, but the gulf between the source and the adaptation is too wide. □

ART / Lawrence Alloway

The term *avant-garde* does not have the luster that once it had, and for several reasons. For one thing, the *avant-garde* has come up against the problem of success, not success as personal achievement but success as what Karl Mannheim called "a realization in the field of social relations." The need to feel heretical can be a great inducement to invention and may be blunted by immediate acceptance. As the art called *avant-garde* has been handled by an able group of dealers, the prices of innovative and traditional art have equalized. Thus, artists are sometimes embarrassed when they acquire "the power of disposing of material things" to the extent that it violates an ethic of bohemianism and dissent.

As *avant-garde* groups multiplied in the 20th century, so did public understanding, and this has had two results. The causative historical factors behind each "new" movement are now widely available, thus abolishing the *avant-garde*'s prized effect of suddenness. In addition, as our general knowledge of the stylistic variety of art has increased, *avant-garde* activities seem less heroic gestures than legitimate variables. "Why not?" has replaced astonishment.

In the United States the hankering of Americans to preserve symbols of pioneer status not only delays gun legislation but also makes acknowledgment of group affiliations much harder for artists. *Avant-garde* activity essentially involves groups, but collaboration is difficult when each member professes absolute individuality. The popularity of dissent and of innovation, as part of what David Riesman called "the democratization of pioneering," insures a big, happy audience for *avant-garde* ideas. As they spread, in universities, through magazines, and via gossip, these ideas are separated from their originators and, often, from their original meanings. Thus the optimistic and communicative impulse of earlier *avant-garde* is muted and sometimes altogether blocked.

These reflections are prompted by the New York Cultural Center's decision to embark on a series of exhibitions of national *avant-gardes*: the first was the Swiss and the second is the British. It would really be better to call them just Swiss art and British art, because certainly the work shown constitutes neither a collective enterprise nor anything innovative. The Swiss show, despite the strength of Swiss concrete art, looked like airport art; the British show is what I, as an expatriate, want to talk about here.

It is a show of photographs and objects rather than of painting and sculpture. The photographs record absent pieces (earthworks) and events, but the objects are mostly situational, alerting the spectator to where he is. One piece by Keith Arnatt, of an electric clock and a tear-off calendar, is entitled: "An Exhibition of the Duration of the Exhibition. May 18-August 30, 1971." David Dye has placed along the floor of one wall, a row of mirrors that reflect reversed writing under little shelves above them. When you take up the right spot you get messages like: "You are 14 feet to the left of the 5th section." The best of the documentary pieces is Victor Burgin's "Installation of One Room," which consists of repeated identical photographs of an office desk and chair, preceded by different narrative passages and followed by an ambiguously phrased inquiry concerning our inferences from the picture in changing verbal contexts. The spectator teeters in a very tense way between a Thematic Apperception Test and its frustrated denial. By comparison, the other documentary pieces are inert, more like Joseph Kosuth than Douglas Huebler. (The Gilbert and George piece, which I would expect to like, was on short loan and had been withdrawn before I saw the show.)

Some of the artists remind me of what Mark Rothko said about an earlier generation of the British *avant-garde*, the so-called "geometry of fear" sculptors of the 1950s (Armitage, Butler, Chadwick): He remarked that the human references in these works, far from being tortured and tragic, reminded him of the figures drawn for *Punch* in the 19th century: cocky cockneys, bristling gentlemen, girls caught in the rain, and all that. The same taste for the funny is still around in sculptures like Barry Flanagan's, awkward and genteel things that look like John Lennon doing Funk art. Or when Bruce McLean entitles a drawing for a project involving rocks and debris "Universal Crimble Crumble Situation" he is adding a touch of Michael Innes to the "bleak" world of *Arte Povera.*

These artists, then, work within the cluster of earthworks-projects-documentary art, but their contributions, aside from one of Richard Long's picturesque tours, are not up to their American and German equivalents. The documentary art tends to be pedagogic (Arnatt, Atkinson and Baldwin) and the object pieces are both mild and obvious. The weaknesses of the show derive not only from the taste of the British organizer, Charles Harrison, but from a recurrent problem in England. Since the end of World War II there have been a number of generational groups, whether we call them

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avant-garde or not, which came on strong but which have not hardened out of a derivative early phase.

There was, in the 1950s, apart from the sculptors Rothko spoke of, a group of painters resident in and around St. Ives, Cornwall. Basically they assimilated aspects of American painting (Tomlin, Motherwell, Rothko) into a Parisian Abstract style. In 1960 a group of London painters exhibited under the name "Situation"; they represented a more rigorous use of American sources (Newman, Kelly, Reinhardt). Through the British sculptor, Anthony Caro, David Smith influenced a new group of young sculptors, and R. B. Kitaj, an American resident in London, had a formative influence on English Pop art.

Such dependencies are normal, of course, and they are not mentioned here to suggest that English art is more derivative than that of other countries. The weakness seems to be that each generation of British artists, finding tutelage abroad, operates in isolation from the preceding generations. This means that peer influence and current new styles dominate, unchecked by other factors. There are very few crossovers between the generations and, as a result, very few continuing themes. Each generation must start from scratch. The energy and talent are sufficient, but in the absence of a system from which all the artists could derive support, there is not much in the way of steady personal development. British art, therefore, tends to be short-winded and one expects less that the present artists will get better than that they will be replaced by artists still younger. □

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THEATRE

HAROLD CLURMAN

Will you enjoy *Lenny?* Who are you?

Though nowadays everything set on a stage is called a play, *Lenny* is barely one (Brooks Atkinson Theatre). It is however a show of considerable interest for those capable of viewing it in its own special light. A compound of Lenny Bruce's routines, it has been pieced together by Julian Barry with thin slices of personal information about Lenny Bruce's marriage, his arraignments before the law on the ground that his "act" was obscene in language, scurrilous and blasphemous in content. His death through an overdose of heroin is summarily visualized.

There is no probing of character beyond what the routines themselves reveal. The event is sustained by Cliff Gorman's performance as Lenny, by an elaborate scenic investiture, sideshow clowning, nude male figures, masked players as "tribal" zombies prancing about to nondescript music which never registers. All this has been devised by Tom O'Horgan who is best known as the director of the uptown *Hair* and many Off-Off Broadway exhibits.

The virtue of O'Horgan's staging is that it makes you aware that you are in a theatre, really seeing something happening. Since very little actually is happening, one is led to expect something sensational at any moment. The eye is engaged; one remains curious. The most attractive sight for me was Jane House's nearly naked body (for the greater part of the evening she plays Bruce's wife), especially as she not only appears in this state as a stripper, which is her profession, but also when she visits her mother-in-law who, judging from what we see, is herself a highly seasoned lady.

The defect of O'Horgan's staging in this instance is that much of what is shown is irrelevant to the verbal context. Exceptions, perhaps, are the huge ("Mount Rushmore") effigies of Presidents Eisenhower, Kennedy, Johnson and Nixon, which Lenny supposedly confronts as a hapless rebel. For the rest, the decoration (Robin Wagner did the "scenery") seems like monkeyshines and special effects brought in from another show.

That impression is made, I am inclined to believe, because the story of Lenny and even his "numbers" are not essentially funny. His exacerbated spirit, his extreme susceptibility to the injuries of our society, his violent disgust and anger, coupled as they were with a self-destructive bent, produced a peculiar wit and, most extraordinary of all, a fantastic inventiveness of speech. Many of his sallies missed fire, but when he was in form his words struck home with savage satiric impact. The effect was more surprising than shocking, and the result was the relief of laughter.

But Bruce was not a funny man, nor was his career anything but painful. On seeing Lenny in London, I thought him haunted and tormented, and when I was asked to comment on his "act," I could say no more than that there was "gold in the garbage."

Very little of this aspect (the laceration) of Lenny Bruce's history is in the play. Even the mention of his child (to whom he was greatly attached) has been excised, no doubt because it would prove a disturbing factor in the entertainment. The play thus becomes an exploitation of a personality that deserves something more. There can be little question that Bruce's "crazy" spiels from 1951 to 1961, in their undisguised contempt and derision of every phase of our mores (political, Spellman-ecclesiastic, sexual, linguistic) had explosive social value, but today these protests, especially as here presented, are almost commonplace—except perhaps on the *Broadway* stage.

What adds to this taming of Bruce is at the same time the show's chief asset: Cliff Gorman. He is remarkable in his vigor, his versatility, his honest and likable commitment. (The episode in which he projects Nixon as a dummy in the ventriloquist Eisenhower's lap is one of the most successful moments of the show.) But no character or person is really created—perhaps under the circumstances cannot be created. There is no center from which the acting can emerge; what Gorman presents is a most capable, indeed an admirable performance. Lenny Bruce still remains to be truly embodied, interpreted. □

HUMUS

the onion

skin
of a lizard

under a pile
of leaves

Ameen Alwan

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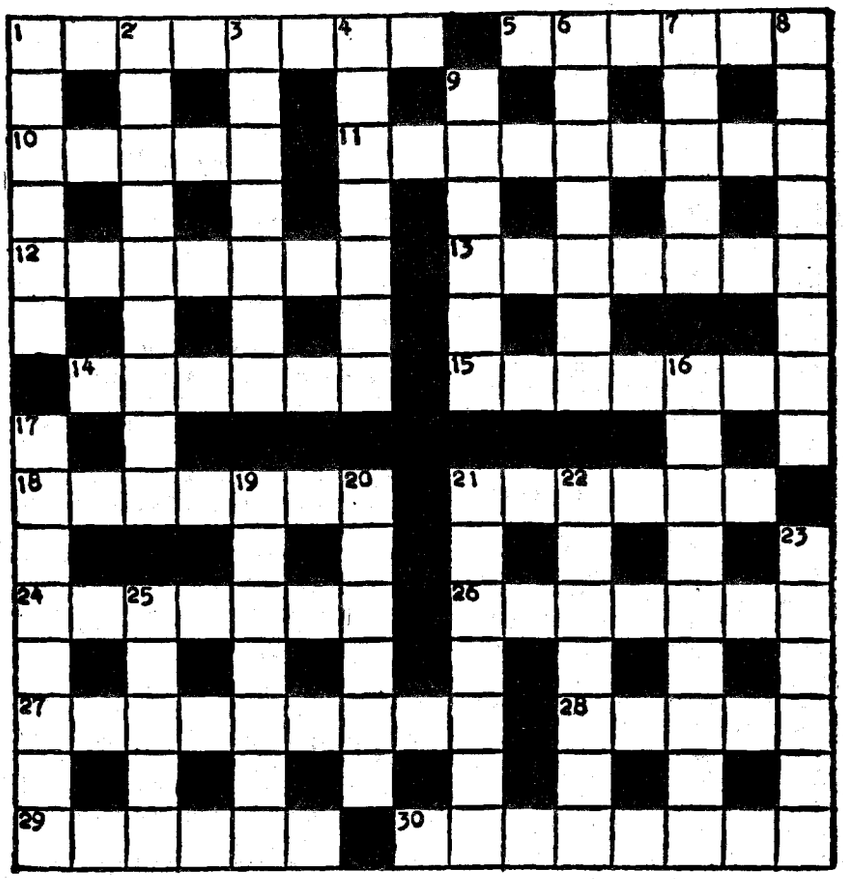
Crossword Puzzle No. 1399

FRANK W. LEWIS



ACROSS

1 With his organization around, sort of spy on us? He had to make his roll the hard way! (8)
10 and 5 What the Light Brigade was forced to make with only one division (perhaps the Eastern, if American)? (4-1-6)
11 Rode, in a sense? One doesn't have a good act! (5-4)
12 One might have lots within the pure alto range. (7)
13 Hippy? (7)
15 Re-halve a concoction of port? (2,5)
18 Admonition to good chickens, according to plan for some buyers. (3-4)
21 and 14 The old-fashioned black type for writers, or the newer version hopefully integated? (6,6)
26 What might provide music time for stanch assistance? (7)
27 Evidently the chosen people took the train, with the conductor. (9)
28 Pipe-making plant. (5)
29 The sort of 25 I get in while acting as a consumer. (6)
30 Possibly a sinker for one that seems money-mad? (8)

DOWN

1 It must be found round a field of activity. (6)
2 Descriptive of the jumpy type, making an old navy man a conservative! (9)
3 Commonly a record meal might be served on it. (7)
4 A variety of raw spud doesn't always grow this way. (7)
6 and 24 across What those unable to follow foreign television might jump to? (Hitler couldn't get over it!) (7,7)
7 Might appear on an untuned 24, at least in spirit. (5)
8 He cares a different way for what most would like to avoid. (8)
9 Perhaps 25 appointed by the state, not quite to ask advice of. (6)
16 A musical instrument gets sort of into trouble with the law, perhaps. (9)
17 One doesn't exactly shine, despite the expression, and be around a servile type. (5,3)
19 A well-known name of Sin Town. (7)
20 Commonly chicken might be of such a color. (6)
21 Equivalent to *Unterseeboot Null* in very cold weather? (3-4)
22 Women sometimes seem to look for it to hang bad, it might seem. (7)
23 and 25 Between you and me, it's not necessarily the gatepost, though you might find one in center stage. (6,5)

SOLUTION TO PUZZLE NO. 1398

ACROSS; 1 Neologism; 6 and 21 First edition; 9 Vermeer; 10 Stipple; 11 and 13 Rampart; 12 Hasten; 15 Penances; 20 Rattlers; 23, 24, 1 down, 16 and 18 One swallow never makes a summer; 25 Imp; 28 Aviator; 29 Abiding; 30 Egger; 31 Overtones. DOWN: 2 Oarsman; 3 Open-handed; 4 Inrushes; 5 Masher; 6 Foil; 7 Replace; 8 Tree toads; 14 Pantywaist; 15 Pastorale; 17 Palliate; 19 Meeting; 22 Barrio; 26 Pages; 27 Star.

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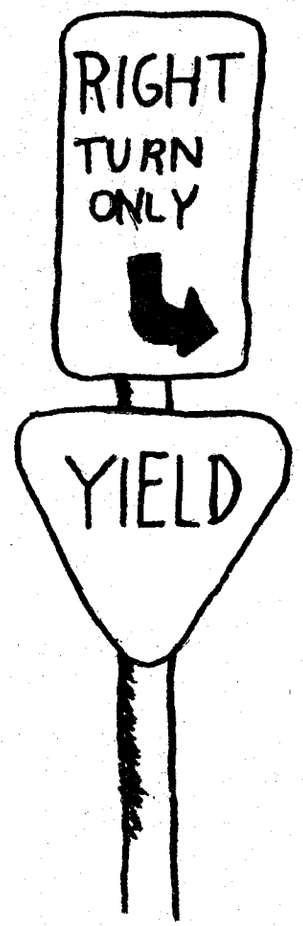

. . . Signs of the Times?

Quite Possibly.

It's an old adage that power tends to perpetuate itself.

The government's power to mislead the public while continuing to inflict senseless, bloody slaughter on the people of Southeast Asia is being threatened. By blacks. By construction workers. By ex-GIs. By college students. By middle-class white America. By you. By us.

"Us" being THE NATION. We've been a threat to those who would misuse power for more than a hundred years. And we are well aware of the potential for political repression in a society where the leaders are going one way, the people another. It is this danger we are committed to combating, tooth and nail. But help is needed.

It's needed now.

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